# (19,052.)

# SUPREME COURT OF THE UNITED STATES

## OCTOBER TERM, 1903.

No. 401.

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MARTIN DALY, PLAINTIFF IN ERROR,

*vs.*

CHARLES ELTON, CHIEF OF POLICE OF THE CITY OF LOS ANGELES.

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IN ERROR TO THE SUPREME COURT OF THE STATE OF CALIFORNIA.

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JUDD & DETWEILER, PRINTERS, WASHINGTON, D. C., SEPTEMBER 10, 1903.

a Copy.

*Petition for Writ.*

In the Supreme Court of the State of California.

In the Matter of the Application of MARTIN DALY for a Writ of *Habeas Corpus*. S. F., No. 930.

Endorsed: Filed this 22 day of July, 1902. Geo. W. Root, clerk. By A. E. Hornlin, deputy clerk.

1 In the Supreme Court of the State of California.

In the Matter of the Application of MARTIN DALY for a Writ of *Habeas Corpus*.

*Petition for Writ.*

To the Honorable W. H. Beatty, chief justice, and to the honorable associate justices of the supreme court of the State of California:

The petition of Martin Daly respectfully shows: That your petitioner is imprisoned, restrained, detained and confined of his liberty by Charles Elton, chief of police of the city of Los Angeles, in the county of Los Angeles, State of California;

That the said imprisonment, detention, confinement and restraint are illegal, and the said illegality thereof consists in this, to-wit: That the only pretext or cause of said arrest or detention is by virtue of a warrant issued out of the police court of the city of Los Angeles, upon a complaint filed therein on the 6th day of March, 1902, charging that your said petitioner, Thaddeus Lowe, F. A. Smith, and others therein named, did, on the 6th day of March,
2 1902, in the city of Los Angeles, in the county and State aforesaid, commit a misdemeanor, in that they and he did wilfully and unlawfully erect and cause to be erected, maintain and cause to be maintained, certain works, establishment and manufactory for the manufacture of gas, and a certain tank, receiver and receptacle for the storage of gas within the corporate limits of said city of Los Angeles, outside the limits of the district described as follows, to-wit:

"Beginning at the intersection of the center line of the official bed of the Los Angeles river with the south charter boundary line of the city of Los Angeles; thence westerly along said south charter boundary line to the center line of Santa Fe avenue; thence northerly along the center line of Santa Fe avenue to the center line of Violet street; thence westerly along the center line of Violet street to the center line of Wilson street; thence northerly along the

center line of Wilson street to the center line of Atlantic street; thence westerly along the center line of Atlantic street to the center line of Alameda street; thence northerly along the center line of Alameda street to the center line of Palmetto street; thence easterly along the center line of Palmetto street to the center line of Molino street; thence northerly along the center line of Molino street to the center line of Fourth street; thence easterly along the center line of Fourth street to the prolongation southerly of the center line of Santa Fe avenue; thence northerly along said prolonged center line of Santa Fe avenue and along the center line of Santa Fe avenue to the center line of First street; thence easterly along the center line of First street to the center line of Center street; thence northerly along the center line of Center street to the center line of Aliso street; thence westerly along the center line of Aliso street to the center line of Alameda street; thence northerly along the center line of Alameda street to Main street; thence along Main street to the intersection of Main and San Fernando streets; thence northeasterly along the center line of San Fernando street to the center line of Redondo street; thence southeasterly, following
3 the line of the Southern Pacific railway on Redondo street and Alhambra avenue, to the official bed of the Los Angeles river; thence southerly along the official bed of the Los Angeles river to the point of beginning. The avenue designated herein as Santa Fe avenue is the avenue lying in the district bounded by the Los Angeles river on the east and Alameda street on the west, and extending in a northerly and southerly direction between these two lines."

That your said petitioner and the said other defendants were duly arraigned and informed of the said complaint, and thereupon your petitioner demurred to the said complaint on the ground that the said complaint did not show the commission of any act or acts which constituted a public offense, but the said demurrer of your petitioner was overruled by the said court, and thereupon your petitioner pleaded not guilty.

That thereafter, on the 29th day of March, 1902, the said F. A. Smith was tried upon the said complaint and afterwards, on the 9th day of April, 1902, the said police court ordered and adjudged that said defendant F. A. Smith be found guilty of a misdemeanor and fined in the sum of one hundred dollars, and ordered that unless the same should be paid forthwith, that the said F. A. Smith should be imprisoned in the city jail of the city of Los Angeles until said fine was paid in the proportion of one day's imprisonment for every one dollar of said fine, not exceeding one hundred dollars.

And thereupon, on the 11th day of April, 1902, the said defendant F. A. Smith duly appealed from the said judgment of the said police court to the superior court of the State of California, in and for the county of Los Angeles, and said appeal came on to be heard in and for the county of Los Angeles, on the 14th day of April, 1902, upon a statement of the case settled by the judge of said police court, em-

bodying the rulings of the said police court and a statement
4 of the evidence heard by the said police justice as herein-
before set forth, and the judge of the said superior court of the State of California, in and for the county of Los Angeles, before whom the appeal was heard, having taken the same under advisement, afterwards, to-wit, on the 18th day of June, 1902, entered an order in said court affirming the judgment of the said police court, and the judgment of the said police court now stands affirmed, and the said police court has proceeded to carry its said judgment into effect.

That thereupon, and thereafter, on the 27th day of June, 1902, said police court proceeded to try your said petitioner, said Martin Daly, upon the said complaint; and at the said trial the following evidence was offered.

On behalf of the prosecution JAMES R. C. BURTON was sworn and testified as follows:

My name is James R. C. Burton. I reside in the city of Los Angeles; am a carpenter. The defendant Martin Daly was on the 6th day of March, 1902, acting as foreman, and was in charge of certain men and laborers engaged in erecting and building certain works, establishment and manufactory for the manufacture of gas and a certain tank, reservoir and receptacle for the storage of gas, and did then and there at the time aforesaid do and perform work and labor upon those certain works, establishment and manufactory for the manufacture of gas and that certain tank, reservoir and receptacle for the storage of gas situated and located within the corporate limits of the city of Los Angeles outside of the limits of that district in said city of Los Angeles, described as follows:

"Beginning at the intersection of the center line of the official
5 bed of the Los Angeles river with the south charter boundary
line of the city of Los Angeles; thence westerly along said south charter boundary line to the center line of Santa Fe avenue; thence northerly along the center line of Santa Fe avenue to the center line of Violet street; thence westerly along the center line of Violet street to the center line of Wilson street; thence northerly along the center line of Wilson street to the center line of Atlantic street; thence westerly along the center line of Atlantic street to the center line of Alameda street; thence northerly along the center line of Alameda street to the center line of Palmetto street; thence easterly along the center line of Palmetto street to the center line of Molino street; thence northerly along the center line of Molino street to the center line of Fourth street; thence easterly along the center line of Fourth street to the prolongation southerly of the center line of Santa Fe avenue; thence northerly along said prolonged center line of Santa Fe avenue and along the center line of Santa Fe avenue to the center line of First street; thence easterly along the center line of First street to the center line of Center street; thence northerly along the center line of Center street to the center line of Aliso street; thence westerly along the center line of

Aliso street to the center line of Alameda street; thence northerly along the center line of Alameda street to Main street; thence along Main street to the intersection of Main and San Fernando streets; thence northeasterly along the center line of San Fernando street to the center line of Redondo street; thence southeasterly, following the line of the Southern Pacific railway on Redondo street and Alhambra avenue, to the official bed of the Los Angeles river; thence southerly along the official bed of the Los Angeles river to the point of beginning. The avenue designated herein as Santa Fe avenue is the avenue lying in the district bounded by the Los Angeles river on the east and Alameda street on the west, and extending in a northerly and southerly direction between these two lines."

And did then and there employ, direct, supervise and control certain laborers and workmen who did then and there at said time and
6 place engage and work in the erecting and building of the aforesaid works, establishment and manufactory for the manufacture of gas and said certain tank, reservoir and receptacle for the storage of gas, and that on said 6th day of March, 1902, said works, establishment and manufactory for the manufacture of gas, and said certain tank, reservoir and receptacle for the storage of gas was not, nor was any one of the same completed, or in any respect finished.

The above was all the evidence that was offered by the prosecution at said trial, and thereupon the prosecution rested.

The defendant then offered the following evidence on his behalf.

MARTIN DALY, being duly sworn, deposes as follows:

My name is Martin Daly. Reside in Camden, State of New Jersey. That I am the defendant and was acting as foreman for Davis & Farnum Manufacturing Company in charge of the erection of the gas holder and water tank of said gas works; that said Davis & Farnum Manufacturing Company was a corporation organized under the laws of the State of Massachusetts and as sub-contractor was erecting said gas holder and water tank for and on behalf of the Valley Gas & Fuel Company, a corporation organized under the laws of the State of California, and that said Valley Gas & Fuel Company was erecting said works above described for and on behalf of and by virtue of the terms of a certain contract existing between said Valley Gas & Fuel Company and one Caroline W. Dobbins; that said Caroline W. Dobbins is, and has been at all times since the 28th day of September, 1901, the owner in fee of the following described premises, situate in the city of Los Angeles, State of California, to wit: All of lots 16, 17, 18 and part of lot 15 of block two,
7 Pomeroy & Mills' subdivision of the Hollenbeck tract, as per map recorded in Book 5, page 199 miscellaneous records of said Los Angeles county. All of said property is within the limits of the district described in ordinance No. 6663 (new series) which ordinance is hereinafter set forth in full.

That said premises so purchased by said Caroline W. Dobbins as aforesaid were bought by her for the purpose of erecting thereon a

gas works in which gas might be made and manufactured, for the purpose of distributing the same to the city of Los Angeles and its inhabitants, and that in said city of Los Angeles there are no public works owned and controlled by the said municipality for supplying the same with artificial light.

That on or about the first day of November, 1901, said Caroline W. Dobbins, pursuant to an ordinance numbered 6108 (new series) of the city of Los Angeles, made an application to the fire commissioners of said city for a permit to erect upon the aforesaid premises gas works.

That said application of said Caroline W. Dobbins was on said 1st day of November, 1901, duly presented to the board of fire commissioners of the city of Los Angeles, and was by them referred to the chief of the fire department for investigation and report, and thereafter, on the 8th day of November, 1901, the application of said Caroline W. Dobbins was taken up by the said board of fire commissioners, and the clerk of the board of fire commissioners reported that the petitioner had advanced the cost of sending the required notification to property owners as prescribed in the building ordinance aforesaid; and that notices had been sent notifying the record owners of the property in the block in which it was intended to erect said building or structure for which permit was sought, and the fact

8 that such permit was applied for, the nature of the same and the time and place, when and where the application for the granting of the same would be heard;

That at said meeting of the said board, said board gave an opportunity to all persons interested to be heard, and upon motion duly made, then and there took the said application and the matters therein referred to under advisement; that afterwards and on the 22nd day of November, 1901, on motion the application of said Caroline W. Dobbins for permission to erect and maintain a gas works was taken from the table, and it was moved and seconded that the application be granted; that upon the taking of the vote upon the motion, three commissioners, to-wit: Webb, Vickery and Frankenfield voted aye, and Commissioner Kuhrts voted no, and thereafter and after a space of ten minutes had elapsed from the announcement of the vote, said Commissioner Kuhrts directed the clerk of the board to change his vote upon said motion from no to aye, and gave notice that on the next meeting he would move to reconsider the question.

That afterwards, and on the 29th day of November, 1901, at the next meeting of the fire commissioners aforesaid, in accordance with the notice given at the last meeting, Commissioner Kuhrts moved to reconsider the motion carried at the last meeting to grant Caroline W. Dobbins a permit to erect gas works, which motion being put was lost by the following vote: no, Commissioners Webb, Vickery and Frankenfield; aye, Commissioner Kuhrts and Mayor Snyder.

That thereupon on said 22nd day of November, said Valley Gas & Fuel Company contracted and agreed to build for said Caroline W. Dobbins gas works and gas tanks upon the said above described

premises, and commenced on said 22nd day of November to lay the foundations, and do other work necessary in the construction of the aforesaid gas works.

9 That subsequent to the 22nd day of November, 1901, when the work of erecting said gas works was commenced as aforesaid, the said Valley Gas & Fuel Company, and others, for and on behalf of said Caroline W. Dobbins, the owner of said premises as aforesaid, had performed a great amount of labor and spent considerable sums of money in the erection of the aforesaid gas works, relying upon the aforesaid permit of the said fire commissioners, and said persons acting for and on behalf of the aforesaid Caroline W. Dobbins have been peaceably engaged in the erection of said gas works, and continued to be so engaged up to the 6th day of March, 1902, when this defendant and twenty-two others were arrested under the warrant issued upon the complaint filed in this action, and that during said time said Caroline W. Dobbins has caused to be erected on said premises a complete gas generator, also two scrubbers and washers used in the manufacture of gas, and that the erection of one water tank and gas holder have been commenced on the foundations already built, and that on the aforesaid 6th day of March, 1902, the said Caroline W. Dobbins has caused work to be done and performed upon the said premises in the erection of said gas works to the value of upwards of twenty-five thousand dollars, which said sum has been expended by her relying upon the permit granted by the said board of fire commissioners as aforesaid.

That on the 26th day of August, 1901, the council of the city of Los Angeles passed a certain alleged ordinance, of which the following is a true copy:

Ordinance No. 6663 (new series).

An ordinance prohibiting the erection or maintenance of gas works, gas tanks or reservoirs within certain portions of the city of Los Angeles.

10 The mayor and council of the city of Los Angeles do ordain as follows:

SECTION 1. It shall be unlawful for any person, firm or corporation to erect or cause to be erected, maintain or cause to be maintained, any works, establishment or manufactory for the manufacture of gas, or any tank, reservoir or other receptacle for the storage of gas within the corporate limits of the city of Los Angeles, outside of the limits of the district described as follows, to-wit:

Beginning at the intersection of the center line of the official bed of the Los Angeles river with the south charter boundary line of the city of Los Angeles; thence westerly along said south charter boundary line to the center line of Santa Fe avenue; thence northerly along the center line of Santa Fe avenue to the center line of Violet street; thence westerly along the center line of Violet street

to the center line of Wilson street; thence northerly along the center line of Wilson street to the center line of Atlantic street; thence westerly along the center line of Atlantic street to the center line of Alameda street; thence northerly along the center line of Alameda street to the center line of Palmetto street; thence easterly along the center line of Palmetto street to the center line of Molino street; thence northerly along the center line of Molino street to the center line of Fourth street; thence easterly along the center line of Fourth street to the prolonged center line of Santa Fe avenue; thence northerly along said prolonged center line of Santa Fe avenue to the center line of First street; thence easterly along the center line of First street to the center line of Center street; thence northerly along the center line of Center street to the center line of Aliso street; thence westerly along the center line of Aliso street to the center line of Alameda street; thence northerly along the center line of Alameda street to the center line of San Fernando street; thence easterly along the center line of San Fernando street to the center line of the official bed of the Los Angeles river; thence southerly along the official bed of the Los Angeles river to the point of beginning.

11 SECTION 2. Any person, firm or corporation who shall violate any of the provisions of this ordinance shall be deemed guilty of a misdemeanor and upon conviction thereof shall be punished by a fine of not less than one hundred dollars ($100) nor more than five hundred dollars ($500) or by imprisonment in the city jail for not less than thirty (30) days nor more than one hundred (100) days, or by both such fine and imprisonment. Every day that such gas works, tank or reservoir is maintained in violation of the provisions of this ordinance, shall be deemed a separate offense within the meaning of this ordinance.

SECTION 3. Ordinance No. 174 approved July 2nd, 1885, and all other ordinances or parts of ordinances in conflict herewith are hereby repealed.

SECTION 4. The city clerk shall certify to the passage of this ordinance and cause the same to be published once in the Los Angeles Daily Journal and thereupon and thereafter it shall take effect and be in force.

I hereby certify that the foregoing ordinance was adopted by the council of the city of Los Angeles at its meeting of August 26th, 1901.

C. H. HANCE, *City Clerk.*

Approved this 26th day of August, 1901.

M. P. SNYDER, *Mayor.*

That on the 25th day of November, 1901, the council of the city of Los Angeles passed a certain alleged ordinance, of which the following is a true copy:

Ordinance No. 6779 (new series).

An ordinance amending ordinance No. 6663, new series, entitled "An ordinance prohibiting the erection or maintenance of gas works, gas tanks, or reservoirs within certain portions of the city of Los Angeles," approved August 26, 1901, by amending section 1 of said ordinance.

The mayor and council of the city of Los Angeles do ordain as follows:

SECTION 1. That section 1 of ordinance No. 6663, new series,
12 entitled "An ordinance prohibiting the erection or maintenance of gas works, gas tanks, or reservoirs within certain portions of the city of Los Angeles," approved August 26th, 1901, be and the same is hereby amended to read as follows:

SECTION 1. It shall be unlawful for any person, firm or corporation to erect or cause to be erected, maintain or cause to be maintained, any works, establishment or manufactory for the manufacture of gas, or any tank, reservoir or other receptacle for the storage of gas within the corporate limits of the city of Los Angeles, outside of the limits of the district described as follows, to-wit:

Beginning at the intersection of the center line of the official bed of the Los Angeles river with the south charter boundary line of the city of Los Angeles; thence westerly along said south charter boundary line to the center line of Santa Fe avenue; thence northerly along the center line of Santa Fe avenue to the center line of Violet street; thence westerly along the center line of Violet street to the center line of Wilson street; thence northerly along the center line of Wilson street to the center line of Atlantic street; thence westerly along the center line of Atlantic street to the center line of Alameda street; thence northerly along the center line of Alameda street to the center line of Palmetto street; thence easterly along the center line of Palmetto street to the center line of Molino street; thence northerly along the center line of Molino street to the center line of Fourth street; thence easterly along the center line of Fourth street to the prolonged center line of Santa Fe avenue; thence northerly along said prolonged center line of Santa Fe avenue to the center line of First street; thence easterly along the center line of First street to the center line of Center street; thence northerly along the center line of Center street to the center line of Aliso street; thence westerly along the center line of Aliso street to the center line of Alameda street; thence northerly along the center line of Alameda street to the center line of San Fernando street; thence southeasterly following the line of the Southern Pacific railway on Redondo
13 street and Alhambra avenue to the official bed of the Los Angeles river; thence southerly along the official bed of the Los Angeles river to the point of beginning.

SECTION 2. The city clerk shall certify to the passage of this ordinance and shall cause the same to be published once in the Los

Angeles Daily Journal, and thereupon and thereafter it shall take effect and be in force.

I hereby certify that the foregoing ordinance was adopted by the council of the city of Los Angeles at its meeting of November 25th, 1901.

C. H. HANCE,
*City Clerk.*

Approved this 26th day of November, 1901.

M. P. SNYDER, *Mayor.*

That on the 3rd day of March, 1902, the council of the city of Los Angeles passed a certain alleged ordinance, of which the following is a true copy:

Ordinance No. 7029 (new series).

An ordinance amending ordinance No. 6663, new series, entitled "An ordinance prohibiting the erection or maintenance of gas works, gas tanks, or reservoirs within certain portions of the city of Los Angeles," approved August 26, 1901, by amending section 1 of said ordinance.

The mayor and council of the city of Los Angeles do ordain as follows:

SECTION 1. That section 1 of ordinance No. 6663, new series, entitled, "An ordinance prohibiting the erection or maintenance of gas works, gas tanks or reservoirs within certain portions of the city of Los Angeles," approved August 26, 1901, be and the same is hereby amended to read as follows:

SECTION 1. It shall be unlawful for any person, firm or corporation to erect or cause to be erected, maintain or cause to be maintained, any works establishment or manufactory for the manufacture of gas; or any tank, reservoir or other receptacle for the
14 storage of gas within the corporate limits of the city of Los Angeles, outside of the limits of the district described as follows, to-wit:

Beginning at the intersection of the center line of the official bed of the Los Angeles river with the south charter boundary line of the city of Los Angeles; thence westerly along said south charter boundary line to the center line of Santa Fe avenue; thence notherly along the center line of Santa Fe avenue to the center line of Violet street; thence westerly along the center line of Violet street to the center line of Wilson street; thence northerly along the center line of Wilson street to the center line of Atlantic street; thence westerly along the center line of Atlantic street to the center line of Alameda street; thence northerly along the center line of Alameda street to the center line of Palmetto street; thence easterly along the center line of Palmetto street to the center line of Molino street; thence northerly along the center line of Molino street to the center line of

Fourth street; thence easterly along the center line of Fourth street to the prolongation southerly of the center line of Santa Fe avenue; thence northerly along said prolongated center line of Santa Fe avenue and along the center line of Santa Fe avenue to the center line of First street; thence easterly along the center line of First street to the center line of Center street; thence northerly along the center line of Center street to the center line of Aliso street; thence westerly along the center line of Aliso street to the center line of Alameda street; thence northerly along the center line of Alameda street to Main street; thence along Main street to the intersection of Main and San Fernando streets; thence northeasterly along the center line of San Fernando street to the center line of Redondo street; thence southeasterly, following the line of the Southern Pacific railway on Redondo street and Alhambra avenue to the official bed of the Los Angeles river; thence southerly along the official bed of the Los Angeles river to the point of beginning.

The avenue designated herein as Santa Fe avenue, is the avenue lying in the district bounded by the Los Angeles river on the east and Alameda street on the west, and extending in a northerly and southerly direction between these two lines.

15 SECTION 2. The city clerk shall certify to the passage of this ordinance and shall cause the same to be published once in the Los Angeles Daily Journal, and thereupon and thereafter it shall take effect and be in force.

I hereby certify that the foregoing ordinance was adopted by the council of the city of Los Angeles at its meeting of March 3rd, 1902.

C. H. HANCE, *City Clerk.*

Approved this 3rd day of March, 1902.

M. P. SNYDER, *Mayor.*

That thereupon, the court having heard the said evidence and having heard the argument of counsel, on the said 27th day of June, 1902, ordered and adjudged that the said defendant Martin Daly be found guilty of a misdemeanor, and fined in the sum of one hundred dollars, and ordered that unless the said sum should be paid forthwith, that the said defendant, Martin Daly, should be imprisrned in the city jail of the city of Los Angeles, until such fine was paid in the proportion of one day's imprisonment for every one dollar of said fine not exceeding one hundred dollars.

And your said petitioner having duly made a motion for a new trial and the same having been overruled, by said court, your petitioner, Martin Daly, duly appealed from the said judgment of the said police court to the superior court of the State of California in and for the county of Los Angeles, and said appeal came on to be heard in the superior court of the State of California, in and for the county of Los Angeles on the 27th day of June, 1902, upon the statement of the case settled by the judge of said police court, embodying the rulings of the said police court, and a statement of evidence

heard by the said police justice, as hereinbefore set forth; and Honorable Lucien Shaw, the judge of the superior court of the State of California, in and for the county of Los Angeles, before whom
16 the said appeal was heard, afterwards, to-wit: on the 27th day of June, 1902, entered an order in said court affirming the said judgment of the said police court, and the judgment of the said police court now stands affirmed, and the said police court has proceeded to carry its said judgment into effect.

That pursuant to the judgment of said police court, your petitioner is at this time in the custody of the said Charles Elton, chief of the police of the city of Los Angeles, and your petitioner charges that he is held by said Charles Elton in violation of the provisions of the constitution of the State of California, and of the United States of America, as he is advised.

Your petitioner further shows that at the date of the said arrest your petitioner, to-wit: on the 6th day of March, 1902, and for some time prior thereto, was and had been in the employ of the Davis & Farnum Manufacturing Company, a corporation organized under the laws of the State of Massachusetts, with its principal place of business in Waltham in the State of Massachusetts, and there engaged in the manufacture of gas works and gas holders and other appliances used in the manufacture and storage of gas; that the said Davis & Farnum Manufacturing Company had entered into a contract with the Valley Gas & Fuel Company aforesaid to erect for Caroline W. Dobbins a certain gas holder upon the premises hereinbefore described, and said Davis & Farnum Manufacturing Company sent your petitioner to the city of Los Angeles to act as foreman of the men in charge of the erection of said gas holder for the said Valley Gas & Fuel Company upon the premises of the said Caroline W. Dobbins aforesaid; that by the arrangement between the said Davis & Farnum Manufacturing Company and the said Valley Gas & Fuel Company your petitioner and the other men so employed were, while working upon the said gas holder, under the control and direction of the said Valley Gas & Fuel Company and
17 paid by it for their services, and the same charged to the said Davis & Farnum Manufacturing Company on account of the contract for the erection of the said gas holder by the said Valley Gas & Fuel Company for the said Caroline W. Dobbins upon the premises aforesaid, and that while your petitioner was so employed he and the said F. A. Smith and other men in the employ of the said Davis & Farnum Manufacturing Company and the said Valley Gas & Fuel Company were arrested under the said complaint and charged with the alleged offense.

And your petitioner further represents that said complaint upon which your petitioner is charged does not state a public offense in this: That said alleged ordinance No. 6663, new series, of the city of Los Angeles, entitled "An ordinance prohibiting the erection and maintenance of gas works, gas tanks or reservoirs within certain portions of the city of Los Angeles, approved August 26th, 1901" is a void and invalid ordinance and is in violation of the provisions of

the constitution of the State of California, and of the provisions of the fourteenth amendment of the Constitution of the United States, in that it is an attempt on the part of the city of Los Angeles to make and enforce a law which abridges the privileges and immunities of the citizens of the United States, in that it attempts to prohibit the erection or maintenance of any works, establishment or manufactory for the manufacture of gas, and the storage of gas within the corporate limits of the city of Los Angeles, except within the limits described in said ordinance, for that said business of erecting and maintaining gas works is not a nuisance, but is a lawful occupation and protected by the provisions of section 19, article 11 of the constitution of the State of California.

And your petioner further alleges that said complaint upon which your petioner is charged does not state a public offense in this,
18 that the said alleged ordinance of the city of Los Angeles No. 7029, entitled "An ordinance amending ordinance No. 6663, new series, entitled 'An ordinance prohibiting the erection and maintenance of gas works, gas tanks, or reservoirs, within certain portions of the city of Los Angeles,' approved August 26th, 1901, by amending section 1 of said ordinance," is a void and invalid ordinance as against the vested rights acquired by the said Caroline W. Dobbins, under and by virtue of the ordinance of the city of Los Angeles approved on the 26th day of August, 1901, as hereinbefore set forth, (if said ordinance shall be held a valid ordinance) by the purchase by her of the property hereinbefore described within the limits which by said ordinance it was lawful to erect gas works within the city of Los Angeles; by the permit granted to her by the board of fire commissioners of the city of Los Angeles on the 22d day of November, 1901, as aforesaid; and by the work performed by her and on her behalf thereunder upon the premises aforesaid; and by the expenditure by her of the large sums of money as hereinbefore set forth in the attempted erection of gas works upon said premises; and by reason of the premises aforesaid, the said ordinance is in violation of the provisions of the constitution of the State of California, section 16, article 1 thereof, that no law impairing the obligation of contracts shall ever be passed and in violation of the provisions of the Constitution of the United States of America, section 10, article 1 thereof, prohibiting any State from passing any law impairing the obligations of contracts and is in violation of the fourteenth amendment of the Constitution of the United States, prohibiting any State from making and enforcing any law abridging the privileges or immunities of any citizen of the United States or depriving
19 any person of liberty or property without due process of law.

And your petitioner further alleges that said pretended ordinance hereinbefore set forth, numbered 7029, attempted to be passed by said city council of the city of Los Angeles on the 3rd day of March, 1902, is null and void and is in violation of the fourteenth amendment of the Constitution of the United States, in this: that it attempts to abridge the privileges or immunities of the said Caroline

W. Dobbins and said petitioner as the employee of said Caroline W. Dobbins and her said contractors, citizens of the United States, in that it purports to prevent the erection of structures set forth therein and does not seek to regulate and control the manner and method in which said structures shall be operated or erected; in that said alleged ordinance purports to prohibit the manufacture and storage of gas and does not seek to regulate the manner in which gas shall be stored or manufactured, or to limit the amount of gas which shall be so stored or so manufactured; and in that said alleged ordinance is unreasonable because it is so indefinite and uncertain in its descriptions of the alleged district in which the aforesaid structures may be erected and gas manufactured and stored, that it is impossible to ascertain therefrom the limits within which said alleged ordinance purports to grant permission for the erection of the aforesaid structures and for the manufacture and storage of gas.

That said ordinance is in violation of the provisions of the said fourteenth amendment of the Constitution of the United States in that it is an attempt upon the part of the City of Los Angeles to make and enforce a law which abridges the privileges and immunities of citizens of the United States in that it attempts to prohibit the erection and maintenance of any works, establishment or manufactory for the manufacture of gas and the storage of gas within the corporate limits of the city of Los Angeles except within the above described district, and that said business of erecting and maintaining gas works is not a nuisance but is a lawful occupation and protected by the provisions of section 19, article XI, of the constitution of the State of California.

That said ordinance is void and invalid and in violation of the provisions of the Constitution of the United States as against the said petitioner or any other person employed in behalf of the said Caroline W. Dobbins and her said contractors in the erection of any gas works or of any tank or receptacle for the recovery, storage or manufacture thereof upon the premises hereinbefore described as being in violation of the several rights acquired by her under and by virtue of said alleged ordinance of the city of Los Angeles No. 6663, hereinbefore set forth, and by virtue of the permit granted to her by the board of fire commissioners of the city of Los Angeles as aforesaid, under which permit and ordinance as aforesaid, your petitioner and the said Caroline W. Dobbins and her contractors have relied in prosecuting the aforesaid work. That said ordinance is further void, invalid and in violation of the provisions of the fourteenth amendment of the Constitution of the United States in that it is unreasonable and is an attempt and was passed in an attempt on the part of the authorities of the city of Los Angeles to foster a monopoly and to protect the Los Angeles Lighting Company, a corporation organized under and by virtue of the laws of the State of California, in the enjoyment of a monopoly of the business of manufacturing and distributing gas in the city of Los Angeles, and for the purpose of discriminating against the said Caroline W. Dobbins

and to prevent her from establishing and maintaining a gas
21 works within the limits of the city of Los Angeles, as will hereinafter more fully and at large appear.

And your petitioner further alleges that the said Caroline W. Dobbins claims that she has the right, by virtue of the said ordinance passed by the city council of the city of Los Angeles on the 26th day of August, 1901, entitled "An ordinance prohibiting the erection or maintenance of gas works, gas tanks, or reservoirs within certain portions of the city of Los Angeles" if the same shall be held a valid ordinance, and by virtue of the purchase of certain lands by her subsequent thereto within the district in which it was lawful to erect gas works by the provisions of said ordinance, and by virtue of the permit granted to her by the board of fire commissioners, on the 22nd day of November, 1901, as hereinbefore set forth, and by reason of the acceptance by her of said permit and the expenditude of the large sums of money by her expended in the attempted erection of said gas works as hereinbefore set forth, to continue the erection of the said gas works on the premises so purchased by her as hereinbefore described, and thereon to operate and maintain the said gas works upon said premises, and of possessing the said property and the rights so acquired without hindrance or opposition from the said City of Los Angeles or its municipal authorities; but your petitioner avers that the said authorities of the said city of Los Angeles threaten that if your petitioner should again engage in the employ of the said Caroline W. Dobbins in the erection of said gas works upon the said premises of the said Caroline W. Dobbins hereinbefore described, or in the maintenance of the said gas works when so erected, that they will continue to arrest and imprison your petitioner as often as he shall engage in said employment and in said work.

And your petitioner further alleges that said ordinance No.
22 7029 is void and invalid and is in violation of the provisions of the fourteenth amendment to the Constitution of the United States in that it is unreasonable and is an attempt on the part of the authorities of the city of Los Angeles to foster a monopoly of the manufacture and distribution of gas in the city of Los Angeles by the Los Angeles Lighting Company aforesaid, which it has heretofore enjoyed, and for the purpose of discriminating against said Caroline W. Dobbins and to prevent her from erecting and maintaining gas works within the city of Los Angeles and that in its enforcement it is made by the authorities of the city of Los Angeles to operate only against the said Caroline W. Dobbins and against no other person or persons whomsoever, or corporation whatsoever, as will hereafter more fully and at large appear.

And your petitioner alleges that the said city of Los Angeles is a municipal corporation created and existing under and by virtue of an act of the legislature of the State of California adopted January 31st, 1889, and that there are within the limits of the city of Los Angeles in said southern district of California, 42.37 square miles of territory, within which limits there are large areas of land unoccu-

pied and vacant and many locations therein suitable for the purpose of erecting gas works and which could be entirely satisfactory to the neighboring inhabitants; that within the limits of said prescribed district of the said city of Los Angeles within which, by the terms of said alleged ordinance No. 7029, attempted to be adopted by the council of the city of Los Angeles March 3rd, 1902, as aforesaid, it is made lawful to erect and maintain gas works, there are 1.24 miles of territory, a map of which city of Los Angeles showing the outlines of said district described in ordinance No. 7029, indicated by red is hereto attached and made a part hereof; that the boundaries of said district are very irregular in their delineation and are not determined by any natural or
23 geographical lines or objects nor with regard to the conditions of the population or inhabitants of the said city of Los Angeles residing within said district, nor as to whether said district is densely or sparsely settled and populated, nor as to whether there are or are not therein large or any tracts of vacant and occupied land; but your petitioner avers that certain of said boundary lines were and are fixed solely for the purpose of protecting certain gas works or reservoirs and receptacles for the storage of gas owned by the aforesaid Los Angeles Lighting Company and more particularly those boundaries and lines in said ordinances described as running along the center lines of Violet street from the center line of Santa Fe avenue; "thence westerly along the center line of Violet street to the center line of Wilson street; thence northerly along the center line of Wilson street to the center line of Atlantic street; thence westerly along the center line of Atlantic street to the center line of Alameda street; thence northerly along the center line of Alameda street to the center line of Palmetto street; thence easterly along the center line of Palmetto street to the center line of Molino street; thence northerly along the center line of Molino street to the center line of Fourth street; thence easterly along the center line of Fourth street to the prolongation southerly of the center line of Santa Fe avenue; and thus including in said district the premises known as block A of the E. B. Miller tract in the said city of Los Angeles, bounded on the north by Seventh street, on the east by Channing street; on the south by Atlantic street and on the west by Alameda street, in which block was and is located the reservoir and gas holder of the aforesaid Los Angeles Lighting Company, and thereby said ordinance discriminates in favor of said Los Angeles Lighting Company and against the said Caroline W. Dobbins and her rights.

24 And your petitioner alleges that within the limits of the said city of Los Angeles and without and beyond the limits and boundaries of the district within which it is lawful to erect and maintain gas works, as by said alleged ordinance No. 7029, it is attempted to be provided, a large number of gas works used and employed in the manufacture, storage and distribution of gas, were at the time of the attempted passage of the said ordinance and still are maintained and operated, and more particularly the works and

plant operated by the Southern Pacific Railroad Company, a corporation, within their railroad yards on Buena Vista street in said city of Los Angeles and without the limits of said alleged district, where are maintained and operated retorts, holders and all necessary appliances for the manufacture of gas on a large and extensive scale for the purpose of supplying *gas on a large and extensive scale for the purpose of supplying* cars with gas; and also the gas works of the California Fruit Canners' Association at the corner of Macy and Anderson streets in the city of Los Angeles and without the limits of said alleged district, at which works gas is manufactured and stored by said cannery company for the purpose of supplying the said works of said company with gas, and also divers and sundry private gas plants used by divers and sundry persons throughout the said city of Los Angeles outside of said alleged district, for the purpose of supplying them and those associated with them with gas, of all which the municipal authorities of the city of Los Angeles then and there had notice and against none of which corporations or persons have the said authorities of the city of Los Angeles enforced or attempted to enforce the provisions of the said ordinance, but only against the said Caroline W. Dobbins and her employés as hereinbefore set forth.

25 And your petitioner further shows and alleges that the said territory surrounding the premises of the said Caroline W. Dobbins hereinbefore described, in which the said gas works of the said Caroline W. Dobbins were being erected, and which was, by the ordinance numbered 6663, new series, hereinbefore set forth, a portion of the territory within which the city of Los Angeles permitted the erection and maintenance of gas works, is and was a district devoted to manufacturing and commercial enterprises almost exclusively; that in said district, prior to the purchase of the property herein described by the said Caroline W. Dobbins, and upon which the said gas works are being erected for the said Caroline W. Dobbins as aforesaid, there was in operation a soap factory; that at all times since the first day of August, 1901, there has been and is now maintained within the district bounded by Redondo and Alhambra streets, the Los Angeles river and San Fernando street, in said city of Los Angeles, one wool-pulling factory which is directly across North Main street in the city of Los Angeles from the said premises of the said Caroline W. Dobbins, three wineries, numerous oil wells in operation, an extensive iron foundry in active operation, a brass foundry, and an extensive oil refinery; that there is a great deal of vacant and unoccupied land, which is and will continue to be comparatively worthless except for the purpose of the erection thereon of manufacturing establishments; that immediately adjacent to the easterly line of said district last herein described are the tracks of the Southern California railway on which are operated the freight and passenger trains of the Santa Fe railroad; that east of that and adjacent thereto is the Los Angeles river, and that east thereof is the right of way and tracks of the San Pedro, Los Angeles and Salt

Lake railroad; that immediately east of those tracks an ex-
26 tensive tannery is located and in operation; that immediately north of said district and north of San Fernando street and adjacent to the tracks of the Santa Fe railroad are the oil tanks and refinery of the Standard Oil Company in extensive operation; that prior to the granting of the permit by the board of fire commissioners of the city of Los Angeles to the said Caroline W. Dobbins on the 22nd day of November, 1901, the said board of fire commissioners and the members of said commission individually and jointly visited and examined the said premises and the said district surrounding the same, and having heard the protests of all persons who appear before them, decided and determined by the granting of said permit that said premises were in all respects a suitable place upon which to erect said gas works; that since the passage of the said ordinance under which your petitioner was charged with the commission of the alleged offense, and while said proceedings were pending in the courts of the State of California against your petitioner as aforesaid, the said city council of the said city of Los Angeles passed an ordinance creating a district in the city of Los Angeles within which it was lawful to erect and maintain oil refineries, the boundaries of which said district included a portion of the district bounded on the south by Alhambra avenue, and on the east by the Los Angeles river; and on the north the limits came within less than one block of the premises upon which the said Caroline W. Dobbins was erecting the said gas works, and there has in said district been erected a large oil refinery by permission of the municipal authorities of the city of Los Angeles.

And your petitioner alleges that said gas works are being constructed by the said Caroline W. Dobbins and are to be completed upon concrete foundations, with a superstructure of brick, steel and iron, of the best material procurable, and are not combustible
27 and that the same are so firmly and substantially constructed that there can be no danger from explosions, bursting or leakage; that all the machinery now in place therein or to be placed therein is of the most approved pattern, and constructed in accordance with the latest devices and improvements known in the manufacture of gas; that said works can and will be operated and maintained by the said Caroline W. Dobbins, by the use of the said devices and improvements and the said machinery therein contained, so that there will be no leakage or escape of odors, and that the same will not create a nuisance and will not interfere in any way with the health, comfort, safety or welfare of the inhabitants of said district and territory in which the said gas works are located upon the premises of the said Caroline W. Dobbins as hereinbefore described, or of any other of the inhabitants of said city of Los Angeles.

And your petitioner further alleges that he is advised that ordinance No. 7029 adopted by the city council of the city of Los Angeles on the 3rd day of March, 1902, is in violation of the provisions of the Constitution of the United States in this: that it is

an attempt upon the part of the City of Los Angeles to regulate commerce among the several States, for the following reasons: That in order to enable the Valley Gas & Fuel Company to carry out its said contract with the said Caroline W. Dobbins to erect upon her premises the said gas works the Davis & Farnum Manufacturing Company aforesaid, on or about the 17th day of September, 1901, at Waltham, in the State of Massachusetts, entered into a certain contract with the said Valley Gas & Fuel Company to erect in the city of Los Angeles for the said Caroline W. Dobbins certain portions of certain gas works for the manufacture, recovery and storage of gas, consisting more particularly of a water tank and gas
28 holder, said holder to be all completed and delivered to the said Valley Gas & Fuel Company for the said Caroline W. Dobbins pursuant to the contract aforesaid; and the said Davis & Farnum Manufacturing Company having immediately on the entering into of said contract commenced at its manufactory in the city of Waltham, the construction of said water tank and gas holder and completing the necessary machinery to be used in connection therewith, and then and there prepared and foundered the necessary iron and steel to be used therein, forwarded the same from the city of Waltham in the State of Massachusetts by railroad transportation to the city of Los Angeles in the State of California aforesaid, and delivered the same upon the premises of the said Caroline W. Dobbins hereinbefore particularly described, and then and there employed your petitioner, who was then and there residing at Camden in the State of New Jersey, to go to the State of California and then and there engage in the work of erecting the said water tank and gas holder as hereinbefore set forth; that your petitioner came to the city of Los Angeles and State of California under and by virtue of the employment hereinbefore set forth and commenced the work upon the said water tank and gas holder and was so engaged until the time of his arrest under the complaint hereinbefore set forth that the passage of the alleged ordinance by the city council of the city of Los Angeles, and the attempted enforcement thereof against your petitioner and the other employés engaged in the erection of said gas works for the said Caroline W. Dobbins has interfered with and prevented the said Davis & Farnum Manufacturing Company from carrying out their said contract with the Valley Gas & Fuel Company, which said contract was protected, as your petitioner is advised, by the aforesaid provisions of the Constitution of the United States in reference to commerce between the several States.

29 Wherefore your petitioner prays that a writ of *habeas corpus* may be granted, directed to the said Charles Elton, chief of police of the city of Los Angeles, commanding him to have the body of your petitioner before your honors forthwith upon the granting of the writ herein prayed for, to do and receive what shall then and there be considered by your honors concerning said petitioner, together with the time and cause of his detention and said

writ; and that said petitioner above named be restored to his liberty.

Dated this 27th day of June, 1902.

MARTIN DALY.

STATE OF CALIFORNIA, *County of Los Angeles,* } *ss:*

Martin Daly, being first duly sworn, deposes and says: That he is the petitioner in the above entitled petition, that he has read the same and knows the contents thereof, and that the same is true, except as to those matters and things therein set forth on information and belief, and as to those, he believes them to be true; and further affiant saith not.

MARTIN DALY.

Subscribed and sworn to before me this 27th day of June, 1902.

[SEAL.] NATHAN NEWBY.

LYNN HELM,
LEE, SCOTT, BAILEY & CHASE,
*Attorneys for Petitioner.*

W. M. PIERSON, *Of Counsel.*

Filed July 22, 1903.

GEO. W. ROOT, *Clerk,*
By A. E. HORNLIN,
*Deputy Clerk.*

30 In the Supreme Court of the State of California.

In the Matter of the Application of MARTIN DALY for a Writ of *Habeas Corpus.*

*Return to Writ Made and Filed in this Court on the 3rd Day of July by Chas Elton, Chief of Police.*

Comes now, Charles Elton, the person upon whom the writ herein was served, and makes return thereto as follows:

I.

That he is, and at all times herein mentioned was the duly appointed, qualified and acting chief of police of Los Angeles city, county of Los Angeles, State of California, and as such is and at all said times was the duly and regularly authorized custodian of the city jail of said city, and of the prisoners therein, and of the prisoners committed by judgment of the police court of said Los Angeles city.

II.

That on the 3rd day of March, 1902, the city council of the said city of Los Angeles, duly and regularly passed an ordinance numbered 7029, new series, of said city, which said ordinance was on said 3rd day of March, 1902, duly signed and approved by the mayor of said city, and which said ordinance was duly published as required by law and went into effect on the 6th day of March, 1902, of which said ordinance the following is a true copy:

31 Ordinance No. 7029 (new series).

An ordinance amending ordinance No. 6663, new series, entitled "An ordinance prohibiting the erection or maintenance of gas works, gas tanks, or reservoirs within certain portions of the city of Los Angeles," approved August 26, 1901, by amending section 1 of said ordinance.

The mayor and council of the city of Los Angeles do ordain as follows:

SECTION 1. That section 1 of ordinance No. 6663, new series, entitled, "An ordinance prohibiting the erection or maintenance of gas works, gas tanks or reservoirs within certain portions of the city of Los Angeles," approved August 26, 1901, be and the same is hereby amended to read as follows:

SECTION 1. It shall be unlawful for any person, firm or corporation to erect or cause to be erected, maintain or cause to be maintained, any works, establishment or manufactory for the manufacture of gas; or any tank, reservoir or other receptacle for the storage of gas within the corporate limits of the city of Los Angeles, outside of the limits of the district described as follows, to wit:

Beginning at the intersection of the center line of the official bed of the Los Angeles river with the south charter boundary line of the city of Los Angeles; thence westerly along said south charter boundary line to the center line of Santa Fe avenue; thence northerly along the center line of Santa Fe avenue to the center line of Violet street; thence westerly along the center line of Violet street to the center line of Wilson street; thence northerly along the center line of Wilson street to the center line of Atlantic street; thence westerly along the center line of Atlantic street to the center line of Alameda street; thence northerly along the center line of Alameda street to the center line of Palmetto street; thence easterly along the center line of Palmetto street to the center line of Molino street; thence northerly along the center line of Molino street to the center line of Fourth street; thence easterly along the center line of
32 Fourth street to the prolongation southerly of the center line of Santa Fe avenue; thence northerly along said prolonged center line of Santa Fe avenue and along the center line of Santa Fe avenue to the center line of First street; thence easterly along the center line of First street to the center line of Center street;

thence northerly along the center line of Center street to the center line of Aliso street; thence westerly along the center line of Aliso street to the center line of Alameda street; thence northerly along the center line of Alameda street to Main street; thence along Main street to the intersection of Main and San Fernando streets; thence northeasterly along the center line of San Fernando street to the center line of Redondo street; thence southeasterly, following the line of the Southern Pacific railway on Redondo street and Alhambra avenue to the official bed of the Los Angeles river; thence southerly along the official bed of the Los Angeles river to the point of beginning.

The avenue designated herein as Santa Fe avenue, is the avenue lying in the district bounded by the Los Angeles river on the east and Alameda street on the west, and extending in a northerly and southerly direction between these two lines.

SECTION 2. The city clerk shall certify to the passage of this ordinance and shall cause the same to be published once in the Los Angeles Daily Journal, and thereupon and thereafter it shall take effect and be in force.

I hereby certify that the foregoing ordinance was adopted by the council of the city of Los Angeles at its meeting of March 3rd, 1902.

C. H. HANCE, *City Clerk.*

Approved this 3rd day of March, 1902.

M. P. SNYDER, *Mayor.*

III.

That thereafter, to wit: on the 6th day of March, 1902, in said city of Los Angeles, a complaint was duly filed in the police court of said city, before H. C. Austin, a duly elected, qualified and acting police judge of said city and of said police court, charging
33 the petitioner, Martin Daly, together with other persons, with a violation of said ordinance No. 7029, which said complaint is in words and figures as follows, to wit:

In the Police Court of Los Angeles City, in the County of Los Angeles, State of California.

PEOPLE OF THE STATE OF CALIFORNIA, Plaintiff,

vs.

THADDEUS LOWE, F. A. SMITH, JOHN DOE, SAM DOE, WILLIAM Doe, Richard Doe, Amos Doe, Joe Doe, James Doe, Charles Doe, George Doe, Frank Doe, Walter Doe, Alex. Doe, John Roe, Sam Roe, William Roe, Amos Roe, Joe Roe, James Roe, Richard Roe, Charles Roe, George Roe, Frank Roe, Walter Roe, Alex. Roe, and Leo Roe, Defendants.

*Complaint Criminal.*

Personally appeared before me, James R. C. Burton of Los Angeles city, who, being first duly sworn, complains and says: That on the 6th day of March, 1902, in the city of Los Angeles, county of Los Angeles, State of California, a misdemeanor was committed by Thaddeus —, F. A. Smith, John Doe, Sam Doe, William Doe, Richard Doe, Amos Doe, Joe Doe, James Doe, Charles Doe, George Doe, Frank Doe, Walter Doe, Alex Doe, John Roe, Sam Roe, William Roe, Amos Roe, Joe Roe, James Roe, Richard Roe, Charles Roe, George Roe, Frank Roe, Walter Roe, Alex. Roe, and Leo Roe, who at the time and place last aforesaid did wilfully and unlawfully erect and cause to be erected, maintain, and cause to be maintained, certain works, establishment and manufactory of gas; and a certain tank, reservoir and receptacle for the storage of gas within the corporate limits of said city of Los Angeles, California, outside of the limits of that certain district described as follows, to wit:

34 "Beginning at the intersection of the center line of the official bed of the Los Angeles river with the south charter boundary line of the city of Los Angeles; thence westerly along said south charter boundary line to the center line of Santa Fe avenue; thence northerly along the center line of Santa Fe avenue to the center line of Violet street; thence westerly along the center line of Violet street to the center line of Wilson street; thence northerly along the center line of Wilson street to the center line of Atlantic street; thence westerly along the center line of Atlantic street to the center line of Alameda street; thence northerly along the center line of Alameda street to the center line of Palmetto street; thence easterly along the center line of Palmetto street to the center line of Molino street; thence northerly along the center line of Molino street to the center line of Fourth street; thence easterly along the center line of Fourth street to the prolongation southerly of the center line of Santa Fe avenue; thence northerly along said prolonged center line of Santa Fe avenue and along the center line of Santa Fe avenue to the center line of First street; thence easterly along the center line of First street to the center line of Center street; thence northerly along the center line of Center street to the center line of Aliso

street; thence westerly along the center line of Aliso street to the center line of Alameda street; thence northerly along the center line of Alameda street to Main street; thence along Main street to the intersection of Main and San Fernando streets; thence northeasterly along the center line of San Fernando street to the center line of Redondo street; thence southeasterly, following the line of the Southern Pacific railway on Redondo street and Alhambra avenue, to the official bed of the Los Angeles river; thence southerly along the official bed of the Los Angeles river to the point of beginning. The avenue designated herein as Santa Fe avenue is the avenue lying in the district bounded by the Los Angeles river on the east and Alameda street on the west, and extending in a northerly and southerly direction between these two lines."

35 All of which is contrary to the form of the ordinances and resolutions adopted and approved by the municipal authorities of said city in such cases made and provided, and against the peace and dignity of the people of the State of California.

Said complainant therefore prays that a warrant may be issued for the arrest of said Thaddeus Lowe, F. A. Smith, John Doe, Sam Doe, William Doe, Richard Doe, Amos Doe, Joe Doe, James Doe, Charles Doe, George Doe, Frank Doe, Walter Doe, Alex Doe, John Roe, Sam Roe, William Roe, Amos Roe, Joe Roe, James Roe, Richard Roe, Charles Roe, George Roe, Frank Roe, Walter Roe, Alex Roe, and Leo Roe, and that they may be dealt with according to law.

JAMES R. C. BURTON.

Subscribed and sworn to before me this 6th day of March, 1902.

[SEAL.] W. W. STOCKWELL,
*Clerk of the Police Court.*

Which said complaint is endorsed: Filed Mar. 6, 1902, H. C. Austin, police judge.

IV.

That thereafter, to wit: on March 7th, 1902, said petitioner, Martin Daly, having been arrested on said charge was taken into said police court, before said judge of said court, in open court and was duly arraigned, fully informed of the charge against him, and of all his legal rights, and entered his plea of not guilty as charged.

That said petitioner was at all times in said police court present in person and with his attorneys Lynn Helm and E. C. Bailey.

V.

That on June 25th, 1902, said petitioner being present in said police court with his attorneys as aforesaid, both parties in
36 open court expressly waived trial by jury, which waiver was duly entered on the minutes and docket of said court, and at said petitioner's request the trial of said cause as to said Martin Daly was set for June 27th, 1902.

VI.

That on said June 27th, 1902, said Martin Daly being present in court with his attorneys as aforesaid, said cause was duly tried by the judge of said court, testimony being introduced by both parties, and the cause being duly submitted, said Martin Daly was adjudged guilty as charged by said court, whereupon the said Martin waived time for sentence.

Whereupon the judge of said court duly passed sentence upon said Martin Daly and entered judgment in words and figures as follows, to wit:

"Whereupon it is ordered and adjudged by the court this 27th day of June, 1902, that for said offense of unlawfully erecting gas works and a tank, reservoir and receptacle for the storage of gas within the corporate limits of the city of Los Angeles and outside the district described in ordinance No. 7029, new series, of said city of Los Angeles, the said Martin Daly be fined in the sum of one hundred dollars, and that in default of the payment of said fine on or before ten o'clock a. m. on the 27 day of June, 1902, the said Martin Daly be imprisoned in the city jail of said Los Angeles city in the proportion of one days imprisonment for each and every one dollar of said fine until the said fine be wholly satisfied, not exceeding one hundred days, and that the defendant be discharged on payment of such portion of said fine as shall not have been satisfied by imprisonment at the rate above described.

H. C. AUSTIN,
*Police Judge.*"

37 VII.

That thereupon a commitment was duly issued out of said police court and placed in the hands of this respondent, of which commitment the following is a true copy:

In the Police Court of the City of Los Angeles, in the County of Los Angeles, State of California—H. C. Austin, Police Judge.

The People of the State of California to the chief of police of the city of Los Angeles, Greeting:

Whereas, Martin Daly was on the 27 day of June, 1902, convicted before me, H. C. Austin, police judge in and for the city of Los Angeles, county of Los Angeles, and State of California, of the crime—unlawfully erecting gas works and a tank reservoir and receptacle for the storage of gas within the corporate limits of the city of Los Angeles, and outside the district described in ordinance No. 7029, new series, of said city of Los Angeles, committed in said Los Angeles city on or about the 6 day of March, 1902.

And whereas upon such conviction I did pass and enter judgment in words and figures as follows, to wit:

"Ordered and adjudged by the court this 27 day of June, 1902, that for said offense of unlawfully erecting gas works and a tank,

reservoir and receptacle for the storage of gas within the corporate limits of the city of Los Angeles and outside the district described in ordinance No. 7029, new series, of said city of Los Angeles, the said Martin Daly be fined in the sum of one hundred dollars, and that in default of the payment of said fine on or before ten o'clock a. m. of the 27 day of June, 1902, the said Martin Daly be imprisoned in the city jail of said Los Angeles city in the proportion of
38 one day's imprisonment for each and every one dollar of said fine until said fine be wholly satisfied, not exceeding one hundred days, and that the defendant be discharged on payment of such portion of said fine as shall not have been satisfied by imprisonment at the rate above prescribed.

H. C. AUSTIN,
*Police Judge.*"

And that, whereas, the said Martin Daly has refused to pay said fine, or any part thereof, and now at this hour of ten o'clock a. m. of this 27 day of June, 1902, the hour and day fixed in said judgment, the said defendant still refuses to pay said fine or any part thereof;

These are therefore to command you, the said chief of police of Los Angeles city, to take and receive the said Martin Daly and imprison him in the city jail of Los Angeles city in the proportion of one day's imprisonment for each and every one dollar of the fine not otherwise satisfied, until said fine be wholly satisfied, not exceeding one hundred days, and to discharge said defendant on payment into court of such remaining portion of said fine as shall not have been satisfied by imprisonment at the rate above prescribed.

Given under my hand and the seal of said police court at the city of Los Angeles, in the county of Los Angeles, this 27 day of June, 1902.

H. C. AUSTIN,
*Police Judge in and for Los Angeles City.*

VIII.

That on the 27th day of June, 1902, said Martin Daly duly filed his notice of appeal and appealed from the judgment of conviction as aforesaid to the superior court of said Los Angeles county, and a statement on appeal was thereupon duly settled and filed.
39 That on the 28th day of June, 1902, said matter of said appeal coming on regularly for hearing in said superior court, the defendant being present with his attorneys as before, the said judgment of said police court was duly affirmed, and a remit-itur from said superior court was duly filed in said police court, stating the facts of the affirmance of said judgment. That the said remit-itur is in words and figures following, to wit:

Department No. —.

In the Superior Court, County of Los Angeles, State of California, —— Term.

JUNE 27TH, 1902.

Present: Honorable Lucien Shaw, judge.

PEOPLE, Plaintiff, Respondent,
*vs.*
MARTIN DALY, Defendant, Appellant. } No. 3357.

On appeal from the police court of the city of Los Angeles, in the county of Los Angeles, State of California.

This cause coming regularly on this day for hearing on appeal from the judgment entered in the police court of the city of Los Angeles, in the county of Los Angeles, State of California, and from the order entered herein in said court denying defendant's motion for a new trial, and denying defendant's motion in arrest of judgment entered in said police court on the 27th day of June, 1902, Lynn Helm and Lee, Scott, Bailey & Chase appear in behalf of the defendant and appellant Martin Daly, and Messrs. Chambers and Davis & Rush appear for the plaintiff and respondent, and this cause having been this day presented and submitted, it is ordered by the court that the judgment and order of the police court of the city of Los Angeles, in the county of Los Angeles, State of California, be and they are hereby affirmed.

I hereby certify the foregoing to be a full, true and correct copy of an order entered on the minutes of said superior court, department No. 2 in the above entitled cause.

40 Attest my hand and the seal of the said superior court this 27th day of June, 1902.

C. W. BELL, *Clerk*,
By W. L. WARREN,
*Deputy Clerk*.

[SEAL.]

Said remittitur is endorsed as follows:

No. 38552. Superior court, county of Los Angeles. —— ——, plaintiff, *vs.* Martin Daly, defendant. Filed Jun- 28, 1902. H. C. Austin, police judge. —— ——, attorneys for defendant."

IX.

Wherefore your respondent makes return that he has said Martin Daly in his custody and under his power and restraint and detains said Martin Daly by virtue of said commitment, a copy of which is hereinbefore set forth and annexed to this return. And the original commitment is herewith produced and exhibited to the court.

And your respondent further returns that the fine imposed by said judgment has not nor has any part thereof been paid, and said judgment now remains in full force and effect and unsatisfied.

Wherefore respondent submits this return that justice may be done in the premises.

CHARLES ELTON,
*Chief of Police of Los Angeles City, State of California.*

July 3, 1903.—Writ filed on return.

41 Received copy of the within for the judge who tried the case this — day of July, A. D., 1902.

—— ——,
*County Clerk.*
By —— ——,
*Deputy Clerk.*

Due service of the within, and receipt of a copy hereof, is hereby admitted this — day of July, A. D., 1902.

—— ——.

42 In the Supreme Court of the State of California.

*Ex Parte*
*v.*
MARTIN DALY. } Crim., 930. H. C.

By the COURT: On reading and filing the within petition it is ordered that a writ of *habeas corpus* issue as therein prayed returnable before the supreme court in banc at San Francisco on Thursday the 3rd day of July 1902, at two o'clock p. m.

June 30 1902.

BEATTY, *C. J.*

Endorsed: Filed Jun- 30 1902. Geo. W. Root clerk by A. E. Hornlin deputy.

43 *Habeas Corpus.*

STATE OF CALIFORNIA,
*City and County of San Francisco,* } ss:

In the Supreme Court of the State of California.

The People of the State of California to Charles Elton, chief police, Los Angeles, Greeting:

We command you, that you have the body of Martin Daly, by you imprisoned and detained, as it is said, together with the time and cause of such imprisonment and detention, by whatsoever name said Martin Daly shall be called, or charged, before the hon. the supreme court of Calif. at San Francisco on the 3rd day of July, A. D. 1902, at 2 o'clock p. m., of that day, to do and receive what

shall then and there be considered concerning the said Martin Daly. And have you then and there this writ.

By order of the court.

Witness, the Hon. W. H. Beatty, chief justice of the supreme court aforesaid, with the seal thereof hereunto affixed, this 30 day of June, A. D. 1902.

Attest: GEO. W. ROOT, *Clerk*,
[SEAL.] By A. E. HORNLIN, *Deputy Clerk*.

Endorsed: Filed July 3—1903 Geo. W. Root clerk by A. E. Hornlin, deputy.

[Endorsed:] Crim. No. —. Supreme court of California. —— —— *vs.* —— ——. Writ of *habeas corpus*. Filed —— —, 189-. Geo. W. Root, clerk, by —— ——, deputy.

44 JULY 3, 1903.

Bank.

*Ex Parte* DALY. H. C. Crim., 930.

Van Dyke J. disqualified retires. Petition and return to writ argued by Lynn Helm for petitioner, Davis & W. B. Mathews for respondent & submitted.

45 In the Supreme Court of the State of California.

CAROLINE W. DOBBINS, Plaintiff and Appellant, *vs.* CITY OF LOS ANGELES, Defendant and Respondent. } L. A., No. 1330. Stipulation.

*It is hereby stipulated*, between the parties in the above entitled cause, by their respective attorneys, that an order may be entered in said cause in said supreme court, advancing said cause, and that the said case when so advanced may be submitted upon briefs filed in said cause, and in considering and deciding the same, the court may consider the briefs on file in the case of *Ex parte* Martin Daly on *habeas corpus*, criminal number 930. said case to be submitted on the third day of February 1903, at the time of the resubmission of the case of *Ex parte* Daly aforesaid.

*And it is further stipulated* that the appellant may within ten (10) days after such submission, file a reply brief in said cause.

LYNN HELM,
LEE, SCOTT, BAILEY & CHASE,
*Attorneys for Plaintiff and Appellant.*
W. B. MATHEWS,
*Attorney for Defendant and Respondent.*

Granted by the court.

Endorsed: Filed Feb. 7 1903. Frank. C. Jordan clerk by J. C. Crooks deputy.

46 By the COURT: The within entitled cause is hereby submitted in accordance with the stipulation of the parties to be considered in conjunction with the case of *Ex parte* Daly Cr. 930.
Feb'y 7, 1903.

BEATTY, *C. J.*

[Endorsed:] L. A. 1330. Caroline Dobbins *vs.* City of Los Angeles. Stipulation.
Endorsed: Filed Feb. 7 1903. Frank C. Jordan clerk by J. C. Crooks deputy.

47 FEB. 9, 1903.

Bank.

*Ex Parte* DALY. H. C. Crim., 930.

Cause submitted in accordance with stipulation and order of Feb. 3 1903. L. A. 1330.

BEATTY, *C. J.*

48 Endorsed: Filed Jun- 3 1903 Frank C. Jordan, clerk by R. D. Duke deputy.

In Bank.

In the Matter of the Application of MARTIN DALY for Writ of *Habeas Corpus*. Crim. No., 930.

By the COURT: The only ground upon which the applicant could be discharged on this proceeding, is the alleged invalidity of certain ordinances of the city of Los Angeles. But in the recently decided case of Dobbins *v.* City of Los Angeles, L. A. No. 1330, (Cal. Dec. vol. 25, p. —) the validity of those ordinances was directly involved, and it was there held that the same are valid; and on the authority of that case the prayer of the petitioner is denied.
The petitioner is remanded and the writ is discharged.

49 Endorsed: Filed May 29—1903 Frank C. Jordan, clerk, by J. C. Crooks deputy.

In Bank.

CAROLINE W. DOBBINS, Plaintiff and Appellant,
*vs.*
CITY OF LOS ANGELES, Defendant and Respondent. } L. A., 1330.

This action was brought to obtain an injunction restraining the defendant, The City of Los Angeles, a municipal corporation, from enforcing certain ordinances of the city prohibiting the erection or maintenance of gas works within certain parts of said city. A demurrer to the complaint was sustained in the court below and judgment rendered for defendant. From the judgment plaintiff appeals.

On the 26th day of August, 1901, the city adopted an ordinance, No. 6663, by which it was provided that "It shall be unlawful for any person, firm or corporation to erect or cause to be erected, maintain or cause to be maintained, any works, establishment, or manufactory, for the manufacture of gas; or any tank, reservoir, or other receptacle for the storage of gas, within the corporate limits of the city of Los Angeles, outside of the limits of the district described as follows, to-wit." (And then follows a description of the district.) It was also provided that any person who should violate the above provision should be guilty of a misdemeanor, and upon conviction be punished by fine or imprisonment or both. On the 3rd day of March, 1902, the city adopted another ordinance No. 7029, amendatory of the said ordinance 6663. This second ordinance merely amends the first by changing the boundaries of the
50 area within which the erection and maintenance of gas works was prohibited. These two ordinances J. C. C. are the only ones necessary to be considered. The plaintiff was engaged in erecting gas works within the territory in which the erection of such works was prohibited by the second ordinance; and it is averred that, by procurement of the defendant, certain employees of plaintiff engaged in labor upon her said gas works have been arrested and prosecuted for a violation of said ordinance, and that defendant threatens to continue to arrest and prosecure her employees for such violation. The prayer of the complaint is that defendant be enjoined and restrained from enforcing said ordinances and from "prosecuting or proceeding with any prosecution commenced or to be commenced" under said ordinance against plaintiff or any of her agents or employees. There are other averments in the complaint which will be noticed hereafter.

The general contention of appellant that the ordinances in question are invalid and void because violative of the 14th amendment to the Federal Constitution, and of other constitutional guaranties State and Federal of the enjoyment of property, or vested rights, the equal protection of the law, etc., is not maintainable. The ordinances were passed in the exercise of the police power which is fully granted to the city of Los Angeles by statutory law, by its charter, and by the constitution of the State. Its charter gives it power to suppress or prohibit all offensive places of business, and to regulate or prohibit explosives, combustibles, or inflammable material within the city, or any specified part thereof. By the act of the State legislature of April 4, 1870, entitled "An act concerning gas works" (Stats. of 1869–'70 p. 815) it is provided that cities
51 "may also control the location and construction of works so that they may be erected on suitable localities to give the least discomfort or annoyance to the public." This act was expressly continued in force by subdivision 20 of section 19 of the Political Code. And by the State constitution, itself, (art. XI, sec. 11) it is provided that "any county, city, town, or township may make and enforce within its limits all such local, police, sanitary, or other regulations, as are not in conflict with general laws." There is no

doubt therefore, that the exercise of this police power belongs to the respondent within its territorial limits; and the only question is whether the adoption of the ordinances in question was a legitimate exercise of it; for all property is held subject to that power. An ordinance obviously and undoubtedly foreign to any of the recognized purposes of the police power, and interferring with the ordinary enjoyment of property would, no doubt, be held by a court to be invalid. But where the ordinance is reasonably within a proper consideration of, and care for, the public health, safety, or comfort, a court will not disturb the legislative act; it will not substitute its own views of what is proper in the premises for those of the legislative body. In Munn *v.* Illinois, 94 U. S. 113, the U. S. Supreme Court states the rule thus: "If no state of circumstances could exist to justify a certain statute, then we may declare this one void because in excess of the legislative power of this State; but if it could, we must presume it did. Of the propriety of legislative interference, within the scope of the legislative power, the legislature is the exclusive judge," This rule is very fully discussed and declared in Powel *v.* Commonwealth of Penn., 127 U. S. 617—
52 the "Oleomargarine" case. (See also Crowley *v.* Christianson, 137 U. S. 87, and Canfield *v.* United States, 167 U. S. 518.) And it cannot be said judicially that volatile, inflammable, explosive, and bad smalling gas, is not within the category of things which interfere with the public safety, welfare, and comfort, and therefore beyond the reach of the police power. The exercise of this power is not confined to the regulation of only such interferences with the public welfare and comfort as come strictly within the common law definition of a "nuisance." (*Ex parte* Lacey, 108 Cal. 326; *Ex parte* Schrader, 33 Cal. 283.)

It is averred in the complaint that the said ordinances were adopted, not for the purpose of protecting public interests, but for the purpose of protecting and favoring a certain named company engaged in the manufacture and sale of gas in said city. But the motives which induce a legislative body to make a law cannot be considered in a judicial proceeding in which the validity of the law in question is involved. In Cooley's Constitutional Limitations sixth edition, p. 231, it is said: "Although it has sometimes been urged at the bar that the courts ought to inquire into the motives of the legislature where fraud and corruption were alleged and annul their action if the allegation were established, the argument has in no case been acceded to by the judiciary, and they have never allowed the inquiry to be entered upon. The reasons are the same here as those which preclude an inquiry into the motives of the governor in the exercise of the discretion vested in him exclusively. He is responsible for his acts in such a case, not to the courts, but to the people;" and numerous authorities are referred to which sustain the text. (See also Hing *vs.* Crowley, 113 U. S. 703.)

It is also averred that prior to the adoption of the second or-
53 dinance plaintiff had made certain contracts with third parties to furnish materials for and do labor on gas works

which she was about to erect, and had purchased land to be used as a site for such works within the territory where the erection of such works, under the first ordinance was permitted, and had expended a considerable amount of money in building the foundation of her contemplated works, and in partly erecting the same; and that by the second ordinance the boundaries of the excepted district were so changed as to put her said land outside of the territory where gas works were permitted. And it is further alleged that prior to the adoption of the second ordinance she had commenced to erect her works under a permit of the board of fire commissioners of said city in pursuance of the fire and building ordinances. And she contends, that even if the general principle relied on is not maintainable, these additional facts make the second ordinance invalid as an unwarranted interference with the enjoyment of property, an impairment of the obligations of contracts, etc. But this contention cannot be maintained. The ordinance provides that "it shall be unlawful for any person to erect or maintain" gas works outside of the described district. This language clearly includes works in course of construction as well as those to be begun in the future; and under the authorities the exercise of the police power clearly covers prohibited buildings partly erected, although great hardship to the builder may follow. It is somewhat difficult to see exactly what is the character and significance of the alleged permit from the fire commissioners. Appellant contends that it was an express contract with the city to allow her to erect and maintain her gas works. We do not think that this
54 conclusion results from the averments of the complaint. At all events there was nothing in this permit which took away from the city the police power which it afterward exercised. The city could not thus estop itself from making and enforcing proper police regulations. In Fertilizing Co. *v.* Hyde Park, 97 U. S. 659, the legislature of the State had granted to plaintiff the privilege of manufacturing fertilizers in the village of Hyde Park and conveying the products through its streets, and plaintiff J. C. C. had expended $200,000 in constructing its plant; but it was held that notwithstanding these facts the village, by virtue of its police power, could prohibit the business and compel the plaintiff to abandon its works. In New Orleans Gas Co. *v.* Louisiana Light Co. 115 U. S. 672, the court say: "Rights and privileges arising from contracts with a State are subject to regulations for the protection of the public health, the public morals, and the public safety, in the same sense, and to the same extent, as are all contracts and all property, whether owned by natural persons or corporations. Whatever therefore in the manufacture or distribution of gas in the city of New Orleans proves to be injurious to the public health, the public comfort, or the public safety, may notwithstanding the exclusive grant to plaintiff, be prohibited by legislation, or by municipal ordinance passed under legislative authority." (See also Barbour *v.* Connelly, 113 U. S. 27; Stone *v.* Miss. 101 U. S. 814; Butchers'

Union Co. *v.* Crescent City Co. 111 U. S. 750; *Ex parte* Lacey, 108 Cal. 326).

Our conclusion is that the ordinances here involved are valid and that therefore the judgment should be affirmed. This view
55 makes it unnecessary to consider the question elaborately discussed by counsel, to wit, whether or not a court of equity will ever enjoin a criminal prosecution.

The judgment appealed from is affirmed.

McFARLAND, *J.*

We concur:

SHAW, *J.*
ANGELLOTTI, *J.*
LORIGAN, *J.*
HENSHAW, *J.*

In the Supreme Court of the State of California.

CAROLINE W. DOBBINS, Plaintiff and Appellant,
vs.
CITY OF LOS ANGELES, Defendant and Respondent.
} L. A., No. 1330.

On appeal from the superior court of the county of Los Angeles.

I, Frank C. Jordan, clerk of the supreme court of the State of California, do hereby certify that the foregoing and annexed is a true and correct copy of the opinion filed May 29th, A. D. 1903, in the above entitled cause, as shown by the records in my office.

Witness my hand and seal of the court this 22rd day of July, A. D. 1903.

FRANK C. JORDAN, *Clerk*,
By J. C. CROOKS, *Deputy*.

56 Endorsed: Filed. May 29th 1903. Frank C. Jordan, clerk, by J. C. Crooks, deputy clerk.

57 Endorsed: Filed Jul- 3 1903 Frank C. Jordan, clerk, by J. C. Crooks deputy.

In the Supreme Court of the State of California.

In bank.

*Ex Parte* DALY. Crim. No. 930.

By the COURT: Rehearing denied, July 2, 1903, Beatty, C. J. Lorigan, J., Henshaw, J., dissenting. Van Dyke, J., not participating.

58 UNITED STATES OF AMERICA:

*Petition for Writ of Error.*

In the Supreme Court of the State of California.

In the Matter of the Application of MARTIN DALY for a Writ of *Habeas Corpus.*

To the Hon. William H. Beatty, chief justice of the supreme court of the State of California:

The petition of Martin Daly, respectfully shows that heretofore, on the 30th day of June, 1902, he was imprisoned, restrained, detained and confined of his liberty by Charles Elton, chief of police of the city of Los Angeles, a municipal corpofation organized under the laws of the State of California, and situated in the county of Los Angeles and State of California; that the said imprisonment, detention, confinement and restraint were illegal, and the said illegality thereof consisted in this, to-wit: that the only pretense or cause of said arrest or detention was by virtue of a warrant of arrest issued out of the police court of the city of Los Angeles on the complaint filed therein on the 6th day of March, 1902, charging that the said petitioner, Martin Daly, Thaddeus Lowe, F. A. Smith and others therein named, had on the 6th day of March, 1902, in the city of Los Angeles, in the county and State aforesaid, committed a misdemeanor in that they did wilfully and unlawfully erect and cause to be erected, maintain and cause to be maintained certain works, establishment and manufactory for the manufacture of gas, and a certain tank, reservoir and receptacle for the storage of gas within
59 the corporate limits of the city of Los Angeles, outside of the limits of the district described in said complaint and in the ordinance hereinafter set forth. That said petitioner and the said other defendants were duly arr-igned and informed of the said complaint, and thereupon your petitioner demurred to the said complaint on the ground that the said complaint did not show the commission of any act or acts which constituted a public offense, but the said demurrer of your petitioner was overruled by the said police court, and thereupon your petitioner plead not guilty.

That thereupon and thereafter, on the 27th day of June, 1902, said police court proceeded to try your said petitioner, said Martin Daly, upon said complaint, and at the said trial the following facts were made to appear: That your petitioner, Martin Daly, was on the 6th day of March, 1902, acting as a foreman and in charge of certain men and laborers engaged in erecting and building certain works, establishment and manufactory for the manufacture of gas, and a certain tank, reservoir and receptacle for the storage of gas, and did then and there at the time aforesaid, do and perform work and labor upon those certain works, establishment and manufactory for the manufacture of gas and that certain tank, reservoir and receptacle

for the storage of gas, situated and located within the corporate limits of the said city of Los Angeles outside of the limits of that district in the city of Los Angeles described in said complaint and the ordinance of March 3rd, 1902, adopted by the city of Los Angeles hereinafter set forth, and did then and there employ, direct, supervise and control certain laborers and workmen who did then and there, at said time and place, engage and work in the erecting and building of the aforesaid works, establishment and manu-
60 factory for the manufacture of gas and build a certain tank, reservoir and receptacle for the storage of gas, and that on said 6th day of March, 1902, said works, establishment and manufactory for the manufacture of gas, and said certain tank, reservoir and receptacle for the storage of gas was not, or was any one of the same completed or in any respect finished.

That said petitioner, Martin Daly, was acting as foreman for Davis & Farnum Manufacturing Company, in charge of the erection of the gas holder and water tank of the said gas works; that said Davis & Farnum Manufacturing Company was a corporation organized under the laws of the State of Massachusetts and as sub-contractor was erecting said gas holder and water tank for and on behalf of the Valley Gas & Fuel Company, a corporation organized under the laws of the State of California, and that said Valley Gas and Fuel Company was erecting said works above described for and on behalf of, and by virtue of the terms of a certain contract executed between said Valley Gas and Fuel Company and one Caroline W. Dobbins; that said Caroline W. Dobbins is and has been at all times since the 28th day of September, 1901, the owner in fee of the following described premises situate in the city of Los Angeles, State of California, to-wit: All of lots sixteen, seventeen and eighteen, and part of lot fifteen of block two, Pomeroy & Mill's subdivision of the Hollenbeck tract, as per map recorded in Book 5, page 199 miscellaneous records of said Los Angeles county. That all of said property is within the limits of the district described in ordinance No. 6663, new series, which ordinance is hereinafter set forth in full; but is without the limits of the district described in ordinance
61 No. 7029, new series, hereinafter set forth in full.

That said premises so purchased by Caroline W. Dobbins as aforesaid, were bought by her for the purpose of erecting thereon a gas works in which gas might be made and manufactured for the purpose of distributing the same to the inhabitants of the city of Los Angeles, and that in said city of Los Angeles there are no public works owned and controlled by the said municipality for supplying the same with artificial light.

That afterwards, on or about the first day of November, A. D. 1901, the said Caroline W. Dobbins pursuant to an ordinance of the city of Los Angeles known as ordinance No. 6108, adopted by the city council of the city of Los Angeles December 28th, 1899, and known as the "building ordinance," made application for the purpose of the manufacture, recovery and distribution of gas, to the board of fire commissioners of the city of Los Angeles, a board authorized by

the city charter of the city of Los Angeles, for a permit to erect gas works upon the premises hereinbefore described for the manufacture, recovery and storage of gas, the said board of fire commissioners having authority under said building ordinance to grant said permit, and said premises being within the limits described by said ordinance passed by the said council of the city of Los Angeles on the 26th day of August, 1901, in which it should be lawful to erect and maintain works for the manufacture of gas, the said gas so manufactured at said works to be supplied to the inhabitants of the city of Los Angeles.

That afterwards, on the 22nd day of November, 1901, upon the application of the said Caroline W. Dobbins for permission to
62 erect and maintain said gas works, the said application was by the said board of fire commissioners duly granted and allowed.

That on the 22nd day of November, 1901, the said Valley Gas and Fuel Company contracted and agreed to build for said Caroline W. Dobbins gas works and gas tanks upon the said above described premises and commenced on said 22nd day of November, 1901, to lay the foundations and to do the other work necessary in the construction of the aforesaid gas works. That subsequent to the 22nd day of November, 1901, when the work of erecting the said gas works was commenced the said Valley Gas and Fuel Company for and on behalf of the said Caroline W. Dobbins, the owner of said premises, had performed a great amount of labor and expended considerable sums of money in the erection of the aforesaid gas works relying upon the aforesaid permit of the said board of fire commissioners, and said persons acting for and on behalf of the said Caroline W. Dobbins had been already engaged in the erection of said gas works and continued to be so engaged up to the said 6th day of March, 1902, when the said petitioner and twenty-two others were arrested upon a complaint filed in said police court aforesaid. That during said time said Caroline W. Dobbins had caused to be erected on said premises a complete gas generator, also two scrubbers and washers used in the manufacture of gas and that the erection of one water tank and gas holder had been commenced on the foundations already built, and that on the aforesaid 6th day of March, 1902, the said Caroline W. Dobbins had caused work to be done and performed upon the said premises in the erection of said works to the value of upwards of $25,000, which sum had been expended
63 by her relying upon the permit granted by said board of fire commissioners aforesaid.

That on the 26th day of August, 1901, the city council of the city of Los Angeles passed a certain ordinance of which the following is a true copy:

Ordinance No. 6663 (new series).

An ordinance prohibiting the erection or maintenance of gas-works, gas tanks or reservoirs within certain portions of the city of Los Angeles.

The mayor and council of the city of Los Angeles do ordain as follows:

SECTION 1. It shall be unlawful for any person, firm or corporation to erect or cause to be erected, maintain or cause to be maintained, any works, establishment or manufactory for the manufacture of gas; or any tank, reservoir or other receptacle for the storage of gas within the corporate limits of the city of Los Angeles, outside of the limits of the district described as follows, to wit:

Beginning at the intersection of the center line of the official bed of the Los Angeles river with the south charter boundary line of the city of Los Angeles; thence westerly along said south charter boundary line to the center line of Santa Fe avenue; thence northerly along the center line of Santa Fe avenue to the center line of Violet street; thence westerly along the center line of Violet street to the center line of Wilson street; thence northerly along the center line of Wilson street to the center line of Atlantic street; thence westerly along the center line of Atlantic street to the center line of Alameda street; thence northerly along the center line of Alameda street to the center line of Palmetto street; thence easterly along the center line of Palmetto street to the center line of Molino street; thence northerly along the center line of Molino street to the center line of Fourth street; thence easterly along the center line of Fourth street to the prolonged center line of Santa Fe avenue; thence northerly along said prolonged center line of Santa Fe avenue to the center line of First street; thence easterly along the center line of First street to the center line of Center street; thence northerly along the center line of Center street to the center line of Aliso street; thence westerly along the center line of Aliso street to the center line of Alameda street; thence northerly along the center line of Alameda street to the center line of San Fernando street; thence easterly along the center line of San Fernando street to the center line of the official bed of the Los Angeles river; thence southerly along the official bed of the Los Angeles river to the point of beginning.

SECTION 2. Any person, firm or corporation who shall violate any of the provisions of this ordinance shall be deemed guilty of a misdemeanor and upon conviction thereof shall be punished by a fine of not less than one hundred dollars ($100) nor more than five hundred dollars ($500) or by imprisonment in the city jail for not less than thirty (30) days nor more than one hundred (100) days, or by both such fine and imprisonment. Every day that such gas works, tank or reservoir is maintained in violation of the provisions of this

ordinance, shall be deemed a separate offense within the meaning of this ordinance.

SECTION 3. Ordinance No. 174 approved July 2nd, 1885, and all other ordinances or parts of ordinances in conflict herewith are hereby repealed.

SECTION 4. The city clerk shall certify to the passage of this ordinance and cause the same to be published once in the Los Angeles Daily Journal and thereupon and thereafter it shall take effect and be in force.

I hereby certify that the foregoing ordinance was adopted by the council of the city of Los Angeles at its meeting of August 26th, 1901.

C. H. HANCE, *City Clerk.*

Approved this 26th day of August, 1901.

M. P. SNYDER, *Mayor.*

64 That on the 3rd day of March, 1902, the council of the city of Los Angeles passed a certain alleged ordinance of which the following is a true copy:

Ordinance No. 7029 (new series).

An ordinance amending ordinance No. 6663, new series, entitled "An ordinance prohibiting the erection or maintenance of gas works, gas tanks or reservoirs within certain portions of the city of Los Angeles," approved August 26, 1901, by amending section 1 of said ordinance.

The mayor and council of the city of Los Angeles do ordain as follows:

SECTION 1. That section 1 of ordinance No. 6663, new series, entitled "An ordinance prohibiting the erection or maintenance of gas works, gas tanks or reservoirs within certain portions of the city of Los Angeles," approved August 26, 1901, be and the same is hereby amended to read as follows:

SECTION 1. It shall be unlawful for any person, firm or corporation to erect or cause to be erected, maintain or cause to be maintained, any works, establishment or manufactory for the manufacture of gas; or any tank, reservoir or other receptacle for the storage of gas within the corporate limits of the city of Los Angeles, outside of the limits of the district described as follows, to-wit:

Beginning at the intersection of the center line of the official bed of the Los Angeles river with the south charter boundary line of the city of Los Angeles; thence westerly along said south charter boundary line to the center line of Santa Fe avenue; thence northerly along the center line of Santa Fe avenue to the center line of Violet street; thence westerly along the center line of Violet street

to the center line of Wilson street; thence northerly along the center line of Wilson street to the center line of Atlantic street; thence westerly along the center line of Atlantic street to the center line of Alameda street; thence northerly along the center line of Alameda street to the center line of Palmetto street; thence easterly along the center line of Palmetto street to the center line of Molino street; thence northerly along the center line of Molino street to the center line of Fourth street; thence easterly along the center line of Fourth street to the prolongation southerly of the center line of Santa Fe avenue; thence northerly along said prolonged center line of Santa Fe avenue and along the center line of Santa Fe avenue to the center line of First street; thence easterly along the center line of First street to the center line of Center street; thence northerly along the center line of Center street to the center line of Aliso street; thence westerly along the center line of Aliso street to the center line of Alameda street; thence northerly along the center line of Alameda street to Main street; thence along Main street to the intersection of Main and San Fernando streets; thence northeasterly along the center line of San Fernando street to the center line of Redondo street; thence southeasterly, following the line of the Southern Pacific railway on Redondo street and Alhambra avenue to the official bed of the Los Angeles river; thence southerly along the official bed of the Los Angeles river to the point of beginning.

The avenue designated herein as Santa Fe avenue is the avenue lying in the district bounded by the Los Angeles river on the east and Alameda street on the west, and extending in a northerly and southerly direction between these two lines.

SECTION 2. The city clerk shall certify to the passage of this ordinance and shall cause the same to be published once in the Los Angeles Daily Journal, and thereupon and thereafter it shall take effect and be in force.

I hereby certify that the foregoing ordinance was adopted by the council of the city of Los Angeles at its meeting of March 3rd, 1902.

C. H. HANCE, *City Clerk.*

Approved this 3rd day of March, 1902.

M. P. SNYDER, *Mayor.*

That thereupon, the said police court having heard the said evidence of the facts aforesaid, on the said 27th day of June, 1902, ordered and adjudged that said petitioner, Martin Daly, be
65 found guilty of a misdemeanor, and fined in the sum of $100, and ordered that unless the said sum should be paid forthwith, that your petitioner, Martin Daly, should be imprisoned in the city jail of the city of Los Angeles until said fine was paid in the proportion of one day's imprisonment for every one dollar of said fine not exceeding $100. That your petitioner having duly made a motion for a new trial and the same having been overruled,

your petitioner, Martin Daly, duly appealed from the judgment of the said police court to the superior court of the county of Los Angeles, and the said appeal came on to be heard in the said superior court of the State of California in and for the county of Los Angeles, on the 27th day of June, 1902, and Honorable Lucien Shaw, judge of the superior court in and for the county of Los Angeles, State of California, and before whom the said appeal was heard, afterwards, to-wit: on the 27th day of June, 1902, entered an order in said court affirming the judgment of the police court, and the judgment of the said police court now stands affirmed and the said police court proceeded to carry its judgment into effect.

That pursuant to the judgment of the said police court your petitioner was at the time of the issuing of the writ of *habeas corpus* herein, in the custody of the said chief of police of the city of Los Angeles, and your petitioner was held by said chief of police in violation of the provisions of the constitution of the State of California and of the United States of America, as he was advised.

That thereupon your petitioner being still in the custody of the said Charles Elton, chief of police, on the 30th day of June,
66 1902, filed a petition in this honorable supreme court of the State of California for a writ of *habeas corpus* wherein, in the petition therein filed, your petitioner set forth the facts hereinbefore set forth, and also that on the said 6th day of March, 1902, and for some time prior thereto, that your petitioner had been in the employ of Davis & Farnum Manufacturing Company, a corporation organized under the laws of the State of Massachusetts, with its principal place of business in Waltham, in the State of Massachusetts, and there engaged in the manufacture of gas works and gas holders and other appliances in the manufacture and storage of gas. That the said Davis & Farnum Manufacturing Company had entered into a contract with the Valley Gas and Fuel Company aforesaid, to erect for Caroline W. Dobbins a certain gas holder upon the premises hereinbefore described, and said Davis & Farnum Manufacturing Company sent your petitioner to the city of Los Angeles to act as foreman of the men in charge of the erection of said gas works for the said Valley Gas and Fuel Company upon the premises of the said Caroline W. Dobbins; that by the agreement between the said Caroline W. Dobbins and the Davis & Farnum Manufacturing Company and the said Valley Gas and Fuel Company, your petitioner and the other men so employed were, while working upon the said gas holder, under the control and direction of the said Valley Gas and Fuel Company and by it paid for their services and the same charged to the said Davis & Farnum Manufacturing Company on account of the contract for the erection of the said gas works by the said Valley Gas and Fuel Company for the said Caroline W. Dobbins upon the premises aforesaid; and that while your petitioner was so employed he and the said F. A. Smith and
67 other men in the employ of the said Davis & Farnum Manufacturing Company and the said Valley Gas and Fuel Com-

pany were arrested under the said complaint and charged with the alleged offense.

That your petitioner in said petition by him filed in said supreme court on the said 30th day of June, 1902, sought to have declared and determined that said complaint upon which your petitioner was charged did not state a public offense in that said alleged ordinance No. 6663, new series, of the city of Los Angeles, entitled "An ordinance prohibiting the erection and maintenance of gas works, gas tanks or reservoirs within certain portions of the city of Los Angeles, approved August 26th, 1901," was a void and invalid ordidance and was in violation of the provisions of the constitution of the State of California and the provisions of the fourteenth amendment of the Constitution of the United States in that it was an attempt on the part of the city of Los Angeles to make and enforce a law which abridges the privileges and immunities of a citizen of the United States in that it attempted to prohibit the erection or maintenance of any works, establishment or manufactory for the manufacture of gas and the storage of gas within the corporate limits of the city of Los Angeles, except within the limits described in said ordinance, for that said business of erecting and maintaining gas works was not a nuisance, but was a lawful occupation and protected by the provisions of section 19, article 11 of the constitution of the State of California.

And your petitioner also sought to have declared and determined that the said complaint upon which your petitioner was
68 charged did not state a public offense in this, that said alleged ordinance of the city of Los Angeles, No. 7029, entitled "An ordinance amending ordinance No. 6663, new series, entitled 'An ordinance prohibiting the erection and maintenance of gas works, gas tanks or reservoirs within certain portions of the city of Los Angeles,' approved August 26th, 1901, by amending section one of said ordinance," is a void and invalid ordinance as against the vested rights acquired by the said Caroline W. Dobbins under and by virtue of the ordinance of the city of Los Angeles approved on the 26th day of August, 1901, as hereinbefore set forth (if said ordinance should be held a valid ordinance) by the purchase by her of the property hereinbefore described within the limits which by said ordinance it was lawful to erect gas works within the city of Los Angeles; by the permit granted to her by the board of fire commissioners of the city of Los Angeles on the 22nd day of November, 1901, as aforesaid; and by the work performed by her and the petitioner herein on the premises aforesaid; and by the expenditure by her of the large sums of money as hereinbefore set forth in the attempted erection of gas works upon the said premises; and by reason of the premises aforesaid, the said ordinance was in violation of the provisions of the constitution of the State of California, section 16, article one thereof, that no law impairing the obligation of contracts should ever be passed, and in violation of the provisions of the Constitution of the United States of America, section ten, article one thereof, prohibiting any State from passing any law impairing

the obligation of contracts, and is in violation of the fourteenth amendment of the Constitution of the United States prohibiting any State from making and enforcing any law abridging the
69 privileges and immunities of any citizen of the United States or depriving any person of liberty or property without due process of law.

And that said ordinance was void and in violation of the provisions of the Constitution of the United States aforesaid, as against the said petitioner or any other persons employed in behalf of the said Caroline W. Dobbins and her contractors in the erection of any gas works or of any tank or receptacle for the recovery or storage or recovery thereof upon the premises hereinbefore described.

And your petitioner prayed that a writ of *habeas corpus* might be granted directed to the said Charles Elton, chief of police of the city of Los Angeles, commanding him to have the body of your petitioner before the supreme court forthwith upon the granting of the writ therein prayed, and receive what should then and there be considered by said supreme court concerning your petitioner together with the time and cause of his detention, and said writ, and that your petitioner should be restored to his liberty.

And such proceedings were had upon the filing of said petition and thereafter, that the said supreme court of the State of California ordered that a writ of *habeas corpus* should duly issue in said matter returnable before the said supreme court of California at San Francisco on the 3rd day of July, 1902, and thereupon, return was made on the said 3rd day of July, 1902, by the said Charles Elton, chief of police of the said city of Los Angeles, State of California, that he had the said petitioner, Martin Daly, under his custody and under his power and restraint, and that he detained the said Martin Daly by virtue of the said committment
70 issued by the said police court of the city of Los Angeles, and that the said fine imposed by the said judgment had not, nor had any part thereof been paid, and that said judgment was in full force and effect, and that said Martin Daly was held by virtue of the committment charging him with a misdemeanor, to-wit: a breach of the ordinance No. 7029, entitled "An ordinance amending ordinance No. 6663, new series, entitled 'An ordinance prohibiting the erection or maintenance of gas works, gas tanks or reservoirs within certain portions of the city of Los Angeles,' approved August 26th, 1901, by amending section one of said ordinance."

And your petitioner further shows that your petitioner did in said petition for writ of *habeas corpus* brought by him for the purpose aforesaid, to-wit: to secure his liberty from which he was restrained and imprisoned under the alleged charge of violating the said ordinance No. 7029, new series, adopted by the city council of the city of Los Angeles on the 3rd day of March, 1903, entitled "An ordinance amending ordinance No. 6663, new series, entitled 'An ordinance prohibiting the erection or maintenance of gas works, gas tanks or reservoirs within certain portions of the city of Los Angeles,' approved August 26th, 1901 by amending section one of said ordi-

nance," and claim and contend that said purported ordinance so adopted by the city council of the city of Los Angeles on the 3rd day of March, 1903, was, as to the rights of your petitioner, the said plaintiff in error, by reason of his employment by the said Caroline W. Dobbins and by reason of the rights acquired by her by the purchase of the land within the district described in the ordinance of August 26th, 1901, and by reason of the violation of her
71 contract entered into between her and the Valley Gas and Fuel Company, and by virtue of the rights secured to her by the city of Los Angeles on the 22nd day of November, 1901, and by reason of the erection of the gas works and the expenditure of large sums of money by her expended upon the premises aforesaid, invalid because in violation of the provisions of the Constitution of the United States prohibiting any State from passing any law impairing the obligation of contracts and because in violation of the provisions of the fourteenth amendment of the Constitution of the United States prohibiting any State from making and enforcing any law abridging the privileges or immunities of any citizen of the United States or depriving any person of liberty or property without due process of law; and the validity of the said ordinance of the said city of Los Angeles passed on the 3rd day of March, 1902, was drawn in question on the ground that it was repugnant to the provisions of the Constitution of the United States aforesaid.

That said petition of *habeas corpus* was on the 3rd day of July, 1903, heard in bank in the said supreme court of the State of California, and submitted to the decision of the honorable justices of the said court, and afterwards, on the 9th day of February, 1903, was by order of said court again submitted to said court, and on the 3rd day of June, 1903, an order was entered upon said petition that said petition should be discharged and your petitioner remanded to the custody of the said Charles Elton, chief of the police of the city of Los Angeles; and it was adjudged that the said ordinance of the city of Los Angeles adopted on the 3rd day of March, 1902,
72 was a valid ordinance as against the rights of your petitioner.

Your petitioner further avers that after the said decision of the supreme court of the State of California in bank, on the 3rd day of June, 1903, your petitioner filed a petition for a rehearing of the said case in bank, which said petition for a rehearing was on the 3rd day of July, 1903, denied, and the said judgment of the said supreme court discharging the said writ of *habeas corpus* and remanding your petitioner to the custody of the said Charles Elton has become final.

And your petitioner further shows that in said petition for a writ of *habeas corpus* brought by your petitioner, there has been a judgment in the highest court in the State of California in which a decision on the said petition could be had, and that by said decision there was drawn in question the validity of the ordinance of the city of Los Angeles No. 7029, new series, passed and adopted by the city of Los Angeles on the 3rd day of March, 1902, entitled "An ordinance amending ordinance No. 6663, new series, entitled 'An ordi

nance prohibiting the erection or maintenance of gas works, gas tanks, or reservoirs within certain portions of the city of Los Angeles,' approved August 26th, 1901, by amending section one of said ordinance," upon the ground that said ordinance was repugnant to the Constitution of the United States, and the decision of the State court is in favor of the validity of said ordinance.

And your petitioner alleges that by the said ordinance of the city of Los Angeles adopted on the 3rd day of March, 1902, entitled "An ordinance amending ordinance No. 6663, new series, entitled 'An ordinance prohibiting the erection or maintenance of gas
73 works, gas tanks or reservoirs within certain portions of the city of Los Angeles,' approved August 26th, 1901, by amending section one of said ordinance," the rights secured to your petitioner were violated because the obligation of the contract entered into between Caroline W. Dobbins the employer of your petitioner, and the said Valley Gas and Fuel Company and that the obligations of the contract between the said Caroline W. Dobbins, the employer of your petitioner, and the city of Los Angeles, granted and secured to the said Caroline W. Dobbins by the said city of Los Angeles, on the 22nd day of November, 1901, were impaired, contrary to the provisions of the Constitution of the United States prohibiting the State from passing any law impairing the obligation of contracts; and also that the rights of your petitioner were violated contrary to the provisions of the Constitution of the United States prohibiting the State from making and enforcing any law abridging the privileges or immunities of any citizen of the United States, or depriving any person of liberty or property without due process of law.

And the supreme court of the State of California did err in deciding in favor of the validity of the said ordinance of the city of Los Angeles No. 7029, new series, entitled "An ordinance amending ordinance No. 6663, new series, entitled 'An ordinance prohibiting the erection or maintenance of gas works, gas tanks or reservoirs within certain portions of the city of Los Angeles,' approved August 26th, 1901, by amending section one of said ordinance" and in not deciding that said ordinance was void as being in violation of the provisions of the Constitution of the United States aforesaid.

74 Wherefore, your petitioner prays that a writ of error presented herewith from the Suprem Court of the United States to the supreme court of the State of California be allowed, and such other process as will enable your petitioner to obtain a review of the said petition for a writ of *habeas corpus* wherein your petitioner is petitioner and plaintiff in error, and the said Charles Elton, chief of police of the city of Los Angeles, is respondent and defendant in error, and the correction of the error aforesaid, committed by the said supreme court of the State of California, and for such other and further orders as may be proper.

And for as much as by the order and judgment of the said police court of the city of Los Angeles and of the commitment therein by which your petitioner is restrained by the said Charles Elton and to whose custody your petitioner is remandsd by the order of

the said supreme court, if your petitioner is imprisoned in the city jail of the city of Los Angeles in the proportion of one day's imprisonment for each and every dollar of the fine imposed upon him until said fine be fully satisfied, not exceeding $100, your petitioner cannot have a hearing upon the writ of error herein before the Supreme Court of the United States until said fine shall have been satisfied, your petitioner prays that upon the allowing of the writ of error herein that your petitioner be enlarged upon recognizance, and your petitioner will ever pray.

LYNN HELM,
LEE, SCOTT, BAILEY & CHASE,
*Attorneys for Petitioner, Martin Daly.*

Endorsed: Filed Jul- 21, 1903. Frank C. Jordan, clerk, by J. C. Crooks, deputy.

75 In the Supreme Court of the State of California.

In the Matter of the Petition of MARTIN DALY for a Writ of *Habeas Corpus*, Petitioner and Plaintiff in Error.

*Order Allowing Writ of Error.*

Upon motion of Lynn Helm and Messrs. Lee, Scott, Bailey & Chase, attorneys for petitioner Martin Daly, and upon filing a petition for a writ of error and an assignment of errors,

It is ordered that a writ of error be, and hereby is, allowed to have reviewed in the United States Supreme Court the judgment heretofore entered herein, and that the amount of said bond on said writ of error be, and hereby is, fixed at five hundred dollars ($500).

And good cause having been shown, it is ordered that said petitioner be enlarged upon recognizance in the sum of $200\frac{00}{100}$ pending the hearing and determination of said writ of error.

Dated, this 16th day of July, 1903.

W. H. BEATTY,
*Chief Justice of the Supreme Court of the State of California.*

Endorsed: Filed Jul- 21 1903 Frank C. Jordan, clerk By J. C. Crooks deputy.

76 UNITED STATES OF AMERICA:

In the Supreme Court of the State of California.

In the Matter of the Application of MARTIN DALY, Plaintiff in Error.

*Order Fixing Bond on Application for a Writ of Error.*

The petitioner, the plaintiff in error Martin Daly, having this day filed his petition for a writ of error from the decision and judgment

thereof made and entered herein to the Supreme Court of the United States, together with an assignment of errors within due time, and also praying that an order may be made fixing the amount of security which the plaintiff should give and furnish upon the said writ of error, and that pending said writ of error the said petitioner might be enlarged upon recognizance, and said petition having this day been granted, and the said writ of error duly allowed,

Now therefore, it is ordered that the bond to be given by the said petitioner, Martin Daly, upon said writ of error, and the amount thereof is hereby fixed at the sum of five hundred dollars ($500), and the said plaintiff in error shall file with the clerk of said court a good and sufficient bond in the sum of five hundred dollars ($500), to the effect that if the said plaintiff in error shall prosecute the said writ of error to effect and answer all damages and costs if he fails to make his plea good, then the said obligation to be void; otherwise to remain in full force and effect; and that said Martin Daly be enlarged upon a recognizance in the sum of $200$^{00}_{100}$ to the effect that if the said Martin Daly, plaintiff in error shall not upon the hearing of said writ of error be ordered to be discharged from custody
77 and restored to his liberty, that he will surrender himself forthwith to the custody of the said Charles Elton, chief of police of the city of Los Angeles, or pay the fine that is assessed against him, for the non-payment of which he is committed herein. The said bond and recognizance to be approved by this court.

Dated, this 16th day of July, 1903.

W. H. BEATTY,
*Chief Justice of the Supreme Court of the State of California.*

Endorsed: Filed Jul- 21 1903 Frank C. Jordan, clerk By J. C. Crooks deputy.

78 In the Supreme Court of the State of California.

In the Matter of the Application of MARTIN DALY, Petitioner, for a Writ of *Habeas Corpus*, Plaintiff in Error.

*Bond on Application for a Writ of Error.*

Know all men by these presents, that we, Martin Daly as principal, and the Union Surety & Guaranty Company of Philadelphia, a corporation organized under the laws of the State of Pennsylvania, with authority under the laws of the State of California to execute bonds, are held and firmly bound unto Charles Elton, chief of police of the city of Los Angeles, and to his successor in office, respondent, in the full and just sum of five hundred dollars ($500.00) to be paid to the said Charles Elton respondent and defendant in error, his successors or assigns, to which payment well and truly to be made we bind ourselves, our heirs, executors, administrators and successors jointly and severally, firmly by these presents.

Sealed with our seals and dated this 15th day of July, 1903.

Whereas, lately at a session of the supreme court of the State of California in a suit pending in said court wherein the said Martin Daly was petitioner for a writ of *habeas corpus*, a final judgment was rendered therein discharging the said writ and remanding the said Martin Daly to the custody of the said Charles Elton, chief of police of the city of Los Angeles, and the said Martin Daly having obtained from the said court a writ of error to reverse the judgment in the aforesaid matter and a citation directed to the said defendant,
79 the said Charles Elton, chief of police of the city of Los Angeles, is about to be issued, citing and admonishing him to be and appear at the Supreme Court of the United States to be holden at Washington in the District of Columbia.

Now the condition of the above obligation is such that if the said Martin Daly shall prosecute his writ of error to effect and shall answer all damages and costs that may be awarded against him, if he fails to make good his plea, then the above obligation to be void; otherwise to remain in full force and effect.

MARTIN DALY,
By EDWARD C. BAILEY, *His Attorney in Fact.*
[SEAL.] UNION SURETY & GUARANTY CO.,
By PAUL N. NIPPERT, *Its Attorney in Fact.*

The foregoing and within bond is hereby approved July 21st, 1903.

W. H. BEATTY,
*Chief Justice of the Supreme Court of the State of California.*

Endorsed: Filed Jul- 21 1903 Frank C. Jordan, clerk By J. C. Crooks deputy.

80 In the Supreme Court of the State of California.

In the Matter of the Application of MARTIN DALY, Petitioner, for a Writ of *Habeas Corpus*, Plaintiff in Error.

*Recognizance upon Writ of Error.*

Know all men by these presents, that we, Martin Daly as principal, and the Union Surety & Guaranty Company of Philadelphia, a corporation organized under the laws of the State of Pennsylvania to execute bonds, are held and firmly bound unto Charles Elton, chief of police of the city of Los Angeles, and to his successor in office, respondent, in the full and just sum of two hundred ($200) dollars to be paid to the said Charles Elton respondent and defendant in error, his successors or assigns, to which payment well and truly to be made we bind ourselves, our heirs, executors, administrators and successors jointly and severally, firmly by these presents.

Sealed with our seals and dated this 16th day of July, 1903.

Whereas, lately at a session of the supreme court of the State of California in a suit pending in said court wherein the said Martin Daly was petitioner for a writ of *habeas corpus*, a final judgment was rendered therein discharging the said writ and remanding the said Martin Daly to the custody of the said Charles Elton, chief of police of the city of Los Angeles, and the said Martin Daly having obtained from the said court a writ of error to reverse the judgment in
81 the aforesaid matter, and pending the hearing thereof it has been ordered that the said Martin Daly be enlarged on a recognizance,

Now the condition of the above obligation is such that if the said Martin Daly shall appear and answer the judgment of imprisonment imposed upon him by the police court of the city of Los Angeles, and will at all times hold himself amenable to the orders and process of this court, and if the said judgment of this court discharging said writ shall be affirmed, will appear and render himself in execution thereof, or if he fails to perform either of these conditions, we will pay to the people of the State of California the sum of one hundred dollars, the amount of said fine, then the above obligation to be void; otherwise to remain in full force and effect.

MARTIN DALY,
By EDWARD C. BAILEY,
*His Attorney in Fact.*

[SEAL.] UNION SURETY & GUARANTY CO.,
By PAUL M. NIPPERT, *Its Attorney in Fact.*

The foregoing and within bond is hereby approved, July 23, 1903.
W. H. BEATTY,
*Chief Justice of the Supreme Court of the State of California.*

Endorsed: Filed Jul- 23 1903 Frank C. Jordan, clerk By J. C. Crooks deputy.

82 UNITED STATES OF AMERICA:

In the Supreme Court of the State of California.

In the Matter of the Application of MARTIN DALY, Plaintiff in Error. Crim., No. 930.

*Certificate of Final Judgment.*

It is hereby certified that this cause was ordered to be, and was determined in bank in the supreme court of the State of California, and that the said court in bank did on the 3rd day of June, 1903, decide said case and render judgment discharging the writ of *habeas corpus* herein and ordering the petitioner remanded to the custody of Charles Elton, chief of police of the city of Los Angeles, the respondent. And that thereafter, and within the time prescribed by

the rules of said court, to-wit: within twenty days after the filing of said judgment, the said petitioner filed in said court his petition presented to said court for a rehearing of the said case in said supreme court of the State of California in bank, and said petition was considered and acted upon by said supreme court of the State of California, and on the 3rd day of July, 1903, the said petition for a rehearing was by said court denied, and thereupon said judgment was final and the order remanding said petitioner ordered issued thereon.

Wherefore, this certificate is ordered to be made a part of the record and to be attested with the seal of said court.

Dated this 16th day of July, 1903.

W. H. BEATTY,
*Chief Justice of the Supreme Court of the State of California.*

83 Attest: FRANK C. JORDAN,
*Clerk of the Supreme Court of the State of California,*
[SEAL.] By OSCAR A. TOLLE,
*Deputy Clerk.*

Endorsed: Filed Jul- 21 1903 Frank C. Jordan, clerk By J. C. Crooks deputy.

84 UNITED STATES OF AMERICA:

In the Supreme Court of the State of California.

In the Matter of the Petition of MARTIN DALY, Plaintiff in Error.

*Assignment of Errors.*

Martin Daly, having petitioned the honorable chief justice of the State of California for an order permitting him to prosecute a writ of error to the honorable, the Supreme Court of the United States from the final judgment made and entered in said cause by the supreme court of the State of California, now makes and presents and files the following assignment of errors herein and says that in the record and proceedings in the above entitled matter there is manifest error in this, to-wit:

I.

By the record herein it appears that the supreme court of the State of California erred in deciding that the ordinance adopted by the city council of the city of Los Angeles on the 3rd day of March, 1902, No. 7029, new series, entitled "An ordinance amending ordinance No. 6663, new series, entitled 'An ordinance prohibiting the erection or maintenance of gas works, gas tanks or reservoirs within certain portions of the city of Los Angeles,' approved August 26th, 1901, by amending section one of said ordinance," was valid as to

the rights of the said plaintiff in error, Martin Daly, as the employee of Caroline W. Dobbins, acquired before the passage of said ordinance.

85 II.

By the record herein it appears that the supreme court of the State of California erred in deciding that the ordinance adopted by the city council of the city of Los Angeles on the 3rd day of March, 1902, No. 7029, new series, entitled "An ordinance amending ordinance No. 6663, new series, entitled 'An ordinance prohibiting the erection or maintenance of gas works, gas tanks or reservoirs within certain portions of the city of Los Angeles,' approved August 26th, 1901, by amending section one of said ordinance," was a valid police regulation, lawfully adopted by the city council of the city of Los Angeles in the lawful exercise of the police power granted to the city of Los Angeles by statute of the State of California by its charter, and by the constitution of the said State.

III.

By the record herein it appears that the supreme court of the State of California erred in deciding that the ordinance adopted by the city council of the city of Los Angeles on the 3rd day of March, 1902, No. 7029, new series, entitled "An ordinance amending ordinance No. 6663, new series, entitled 'An ordinance prohibiting the erection or maintenance of gas works, gas tanks or reservoirs within certain portions of the city of Los Angeles,' approved August 26th, 1901, by amending section one of said ordinance," was not an invalid ordinance as an unwarranted interference with the enjoyment of the property rights of the said plaintiff in error as the employee of said Caroline W. Dobbins, acquired prior to the adoption of said ordinance, and an *an* impairment of the obligation of the contracts made before the passage of said ordinance.

86 IV.

By the record herein it appears that the supreme court of the State of California erred in deciding that the ordinance adopted by the city council of the city of Los Angeles on the 3rd day of March, 1902, No. 7029, new series, entitled "An ordinance amending ordinance No. 6663, new series, entitled 'An ordinance prohibiting the erection or maintenance of gas works, gas tanks or reservoirs within certain portions of the city of Los Angeles,' approved August 26th, 1901, by amending section one of said ordinance," was not a valid ordinance as abridging the privileges and immunities of the said plaintiff in error, and depriving him and his employer, said Caroline W. Dobbins, of her property acquired prior to the adoption of said ordinance without due process of law.

V.

That the matters charged in the complaint against said Martin Daly, did not constitute a public offense by common law, or under any ordinance of the city of Los Angeles, or under any law of the State of California, or under any statute of the United States.

VI.

That the matters testimony tending to prove which was given before the police court of the city of Los Angeles in the above entitled matter, did not constitute a public offense by the common law or under any ordinance of the city of Los Angeles, or under any law of the State of California, or under any statute of the United States.

VII.

That the said police court of the city of Los Angeles had
87 no jurisdiction to issue a warrant for the arrest of the said Martin Daly.

VIII.

That the said defendant in error, Charles Elton, chief of police of the city of Los Angeles, had no authority to arrest or detain the said plaintiff in error, Martin Daly.

IX.

That the supreme court of the State of California erred in not discharging the said Martin Daly, plaintiff in error, upon the return of the writ of *habeas corpus* herein.

X.

That the supreme court of the State of California erred in discharging the said writ of *habeas corpus* upon the return thereof herein, and in remanding the said petitioner to the custody of the said Charles Elton.

By the record aforesaid, it appears that the judgment of the supreme court aforesaid, was given against the said plaintiff in error, and did discharge the said writ of *habeas corpus* and remand the said Martin Daly, plaintiff in error, to the custody of the said Charles Elton, chief of police of the city of Los Angeles, defendant in error, whereas, by the law of the land the said judgment of the supreme court of the State of California ought to have discharged the said Martin Daly, plaintiff in error, from custody and restored him to his liberty, and the said decision ought to have been against the validity of the said ordinance of the city of Los Angeles adopted on the 3rd day of March, 1902, as aforesaid, and that said ordinance was repugnant to the Constitution of the United States

and void, and the said plaintiff in error prays that the judg-
88 ment and decision of the supreme court of the State of California may be reversed, annulled and altogether held for naught, and that the said supreme court of the State of California may be ordered to enter an order directing the discharge of the said Martin Daly, plaintiff in error, from custody, and that the plaintiff in error may have such other relief as he may be entitled to.

LYNN HELM,
LEE, SCOTT, BAILEY & CHASE,
*Attorneys for Martin Daly, Plaintiff in Error.*

Endorsed: Filed Jul- 21, 1903. Frank C. Jordan, clerk, by J. C. Crooks, deputy.

89 UNITED STATES OF AMERICA, *ss:*

*Citation.*

In the Supreme Court of the State of California.

In the Matter of the Petition of MARTIN DALY, Plaintiff in Error.

To Charles Elton, chief of the police of the city of Los Angeles, respondent, Greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States to be held at the city of Washington in the District of Columbia, within sixty days from the date hereof, pursuant to a writ of error filed in the clerk's office of the supreme court of the State of California, wherein Martin Daly is petitioner and plaintiff in error in this action, and you are the respondent and defendant in error therein, to show cause, if any there be, why the judgment rendered against the plaintiff in error as in the said writ of error mentioned should not be corrected and speedy justice should not be done to the parties in that behalf.

Witness the Honorable W. H. Beatty, chief justice of the supreme court of the State of California, this 16th day of July, 1903, and the Independence of the United States the one hundred and twenty-ninth.

W. H. BEATTY,
*Chief Justice of the Supreme Court of the State of California.*

Due service of within citation and receipt of copy of writ of error mentioned therein this day admitted, and a copy of the same
90 served upon us at Los Angeles city, California, this 17th day of July, 1903.

W. B. MATHEWS,
*Attorney for Defendant in Error.*

91 [Endorsed:] R. Crim. No. 930. Supreme court of the State of California In the matter of the petition of Martin

Daly plaintiff in error. Citation. Lynn Helm, Lee, Scott, Bailey & Chase, attorney- for plaintiff Los Angeles, California Filed Jul- 21 1903 Frank C. Jordan, clerk by J. C. Crooks, deputy.

92 UNITED STATES OF AMERICA, ss:

The President of the United States to the honorable justices of the supreme court of the State of California, Greeting:

Because in the records and proceedings, as also in the rendition of the judgment of a plea which is in the said supreme court of the State of California before you or some of you, being the highest court of law or equity of the said State, in which a decision could be had in that certain matter of the petition of Martin Daly for a writ of *habeas corpus*, petitioner and plaintiff in error, and Charles Elton, chief of police of the city of Los Angeles, respondent thereto and defendant in error, wherein was drawn in question the validity of a statute, or an authority exercised under said State, to-wit: an ordinance of the city of Los Angeles, on the ground of their being repugnant to the Constitution, treaties and laws of the United States, and the decision was in favor of such their validity; or wherein was drawn in question the construction of a clause of the Constitution, or of a treaty, or statute of, or commission held under the United States, and the decision was against the title, right, privilege, or exemption specially set up or claimed under such clause of the said Constitution, treaty, statute, or commission; a manifest error hath happened to the great damage of the said Martin Daly, as by his complaint appears. We being willing that error, if any hath been, should be duly corrected, and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that then under your seal, distinctly and openly,
93 you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you have the same
J. C. C. at Washington, on the 14th day of September, next, in the said Supreme Court, to be then and there held, that the record and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done therein to correct that error, what of right, and according to the laws and customs of the United States, should be done.

Witness, the Honorable Melville W. Fuller, Chief Justice of the Supreme Court of the United States, the 16th day of July, A. D. 1903.

[Seal U. S. Circuit Court, Northern Dist. Cal.]

SOUTHARD HOFFMAN,
*Clerk U. S. Circuit Court, Northern District of California,*
By W. B. BEAIZLEY,
*Deputy Clerk.*

Allowed by
W. H. BEATTY,
*Chief Justice of the Supreme Court of the State of California.*

94 [Endorsed:] R. Crim. No. 930 In the Supreme Court of the United States. In the matter of the application of Martin Daly, plaintiff in error. Original Writ of error. Lynn Helm, Lee, Scott, Bailey & Chase, attorneys for plaintiff in error Los Angeles, California. Filed Jul- 21 1903 Frank C. Jordan, clerk By J. C. Crooks deputy.

95 In the Supreme Court of the State of California.

*Ex Parte*
*v.*
MARTIN DALY. } Crim., 930. H. C.

I Frank C. Jordan clerk of the supreme court of the State of California, do hereby certify that the preceeding and annexed papers are true copies of the within stated papers in the cases of *Ex parte* Daly H. C. crim. 930 and a copy of a decision in Dobbins *vs.* City of Los Angeles L. A. 1330, which papers are on file in the office of the clerk of the supreme court of the State of California; these copies with the original citation and original writ of error constituting the papers on appeal to the United States Supreme Court.

The papers and copies referred to are, copy of petition for writ of H. C., minute orders of Feb. 9/03, and July 3/03, stipulation of Feb. 7/03, decision of June 3/03 decision in Dobbins *vs.* City of L. A., of May 29 1903, minute order of July 3/03, petition for writ of error, order allowing writ of error, order fixing bond, bond, recognizance upon writ of error, certificate of final judgment, assignment of errors. Together with the original citation and original writ of error. Copy of writ of *habeas corpus*, and copy of order to issue writ of *habeas corpus*.

Witness my hand and the seal of the court, this 28th day of July, A. D. 1903.

[Seal Supreme Court of California.]

FRANK C. JORDAN, *Clerk*,
By J. C. CROOKS, *Deputy*.

Endorsed on cover: File No. 19,052. California supreme court. Term No. 401. Martin Daly, plaintiff in error, *vs.* Charles Elton, chief of police of the city of Los Angeles. Filed August 19th, 1903.